IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CRIMINAL JURISDICTION

CONFIRMATION CASE NO.2 OF 2001

The State of Maharashtra	)..Original Complainant
Versus	)
1. Renukabai @ Rinku @ Ratan W/o Kiran Shinde	)
2. Seema @ Devki @ Devli Mohan Gavit	)..Respondents (Org.Accused Nos.1 & 2)

W I T H

CRIMINAL APPEAL NO.718 OF 2001

1. Renukabai @ Rinku @ Ratan W/o Kiran Shinde	)
2. Seema @ Devki @ Devli Mohan Gavit	)..Appellants (Org.Accused
Versus	) Nos.1 & 2)
The State of Maharashtra	)..Respondents

Mrs.S.A.Pai, Additional Public Prosecutor for the State of Maharashtra.

Mr.H.S.Venegaonkar Advocate for Respondent Nos.1 and 2.

Coram : R.M.S.Khandeparkar & R.S.Mohite,JJ

Date :

Judgment :- (Per : Mohite, J)

1. Criminal Appeal No.718 of 2001 has been filed by Renukabai @ Rinku @ Ratan, wife of Kiran Shinde (Here-in-after referred to as ‘Renuka’) and Seema @

Devki @ Devli Mohan Gavit (Here-in-after referred to as ‘Seema’). The Appeal seeks to quash and set aside a Judgment and order passed by the Additional Sessions Judge, Kolhapur on 28.06.2001 in Session Case Nos.55 and 56 of 1997. In the aforesaid two Session cases the present 2 accused were tried for having kidnapped 13 children, attempting to kidnap one more child and committing the murder of 9 of the 13 children kidnapped by them. Since the trial involved the kidnapping and murder of children over a long period of time, commencing in June-1990 and ending in October-1996, it would be convenient to deal with the facts as separate incidents. These incidents, the related convictions and the sentences imposed by the trial court can be categorised as under :-

(A) The conspiracy entered into between the accused, accused Anjanabai (Here-in-after referred to as ‘Anjanabai’) and approvar Kiran Shinde (Here-in-after referred to as ‘Kiran’) in June-1990 in the house of one Saste in Pune city. For this act of conspiracy the trial court has convicted the accused under Section 120-B of the Penal Code and has sentenced them to death by hanging, subject to confirmation by the High Court.

(B) The kidnapping of a child named **Santosh** aged about 1 & 1/2 years in the first week of July-1990

at Kolhapur by the accused and Anjanabai, his subsequent murder by Anjanabai on instigation by the accused at S.T.Stand Kolhapur and the disposal of the dead body by accused no.1 Anjanabai and Kiran at a spot near a rikshaw parked at about 15 minutes walking distance from the said S.T.Stand. For these incidents, the accused have been convicted and sentenced as under :-

(i) Under Section 302 read with Section 120-B of the Indian Penal Code, the sentence being death by hanging subject to confirmation by the High court.

(ii) Under Section 363 read with Section 120-B of the Indian Penal Code, the sentence being rigorous imprisonment for 3 years with a fine of Rs.2000/- each, in default to suffer rigorous imprisonment for one year on each count.

(iii) Under Sections 364, 365, 344 and 466 read with Section 120-B of the Indian Penal Code, the sentence being rigorous imprisonment for 2 years and to pay a fine of Rs.2000/- each, in default to suffer further rigorous imprisonment for one year each on each count.

(iv) Under Section 201 read with Section 120-B of the Indian Penal Code, the sentence being to suffer rigorous imprisonment for 5 years and to pay fine of

Rs.5000/- each, in default to suffer rigorous imprisonment for 2 years.

(C) The kidnapping of a child named **Naresh** aged about 9 months from Thane S.T.Stand in December-1991, causing of hurt to this child, the abandoning of this child on 28.2.1992 at Ramkunj Temple situated near Panchavati Ganga Ghat at Nasik and the filing of a false and forged application in the court by accused no.1 seeking the custody of this child. For these incidents, the accused are convicted and sentenced as under :-

(i) For the offence punishable under Section 364 read with Section 120-B of the Penal Code to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.2000/- each, in default to suffer rigorous imprisonment for one year each.

(ii) For offences punishable under Sections 468, 469, read with Section 120-B of the Penal Code, being sentenced to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.2000/- each, in default to suffer rigorous imprisonment for 1 year each on each count.

(iii) For offences punishable under Section 323 read with Section 120-B of the Indian Penal Code, being

sentenced to suffer rigorous imprisonment for 6 months and to pay a fine of Rs.1000/- each, in default to suffer rigorous imprisonment for 3 months.

(D) The kidnapping of a male child named **Bunty** aged about 1 year and a girl child **Swati** aged about 2 years in April-1993 by the accused and Anjanabai from Kalyan Railway station, the kidnapping of a male child named **Guddu** aged about 2 & 1/2 years and a girl child named **Meena** aged about 3 years by the accused and Anjanabai in May-1993 from the V.T.Station at Bombay, the release of Swati in the bazar at Loni Karbhor along Solapur road at Pune in or about July-1993, the murder of Bunty and Guddu by the accused in a car near Khandala ghat, the throwing of the dead body of Bunty in the Khandala ghat valley by Anjanabai, the throwing of the dead body of Guddu on the side of the road at Shil-phata by Anjanabai, the rescue of Meena from Matwad chawl situated at Kothrud Pune by the Police. For these incidents, the accused are convicted as under :-

(i) Under Sections 363, 364 read with Section 120-B of the Penal Code for the kidnapping of Bunty, the sentence being rigorous imprisonment for 3 years and a fine of Rs.2000/- each, in default to suffer rigorous imprisonment for 1 year each, on each count. (It may be mentioned here that though both

the accused were charged for the offence punishable under Section 302 & 201 read with Section 120-B of Indian Penal Code for the killing and disposal of the body of Bunty, they were acquitted of the said charge by partially dis-believing the accomplice Kiran Shinde (PW 1). It may further be mentioned that though the trial court in its reasoning found the accused guilty of the kidnapping of Swati in the operative order, the trial court appears to have missed convicting and sentencing the accused for this offence.

(ii) For offences punishable under Sections 363, 364, 342, 323, 344 read with Section 120-B of the Indian Penal Code for the kidnapping of Guddu and Mina, the sentence being rigorous imprisonment for 1 year and a fine of Rs.2000/- each, in default to suffer rigorous imprisonment for 6 months each on each count. (The accused were acquitted for the charges under Section 302 read with Sections 120-B and 201 read with 120-B framed in connection with the murder of the child Guddu).

(E) The kidnapping of **Anjali @ Pinky**, a girl child aged about 2 years by the accused and Anjanabai from Kalika Mandir, Nasik on 18.10.1994, killing of the said child by accused and Anjanabai in November-1994 at the house of one Khopde situated at Gondhalinagar, Hadapsar Pune and the disposal of the

dead body of this child by Kiran, Anjanabai and accused no.1 near Saswad road at Pune. For this incident, the accused have been convicted and sentenced as under :-

(i) Under Section 302 read with Section 120-B of the Indian Penal Code, the sentence being death by hanging subject to confirmation by the High court.

(ii) Under Sections 363, 364 read with Section 120-B of the Indian Penal Code, the sentence being rigorous imprisonment for 3 years with a fine of Rs.2000/- each, in default to suffer rigorous imprisonment for 1 year each, on each count.

(iii) For offences punishable under Sections 344, 346 read with Section 120-B of the Indian Penal Code, the sentence being rigorous imprisonment for 2 years with a fine of Rs.2000/- each, in default to suffer rigorous imprisonment for 1 year each, on each count.

(iv) For offences punishable under Section 201 read with Section 120-B of the Indian Penal Code, the sentence being rigorous imprisonment for 5 years with a fine of Rs.5000/- each, in default to suffer rigorous imprisonment for 2 years on each count.

(F) The kidnapping of **Swapnil @ Raja**, a male child

aged about 7 months in the first week of March-1995 by the accused, Anjanabai and Kiran from S.T.stand Kolhapur, the killing of the said child in the 2nd week of March-1995 by accused no.2 in the house of Khopde, situated at Gondhalinagar, Hadapsar, Pune and the disposal of the dead body of this child by throwing the same in the area of Khandala ghat. For these incidents, the accused have been convicted and sentenced as under :-

(i) Under Section 302 read with Section 120-B of the Indian Penal Code, the sentence being death by hanging subject to confirmation by the High Court.

(ii) Under Sections 363, 365, and 342 read with Section 120-B of the Penal Code, the sentence being rigorous imprisonment for 2 years with a fine of Rs.2000/- each, on each count, in default to suffer rigorous imprisonment for 1 year each, on each count.

(iii) For offences punishable under Section 201 read with Section 120-B of Indian Penal Code, the sentence being rigorous imprisonment for 5 years with a fine of Rs.5000/-, in default to suffer rigorous imprisonment for 2 years each, on each count.

(G) The kidnapping of a girl child named **Shradha @**

Rani @ Bhagyashri, aged about 1 year & 9 months by the accused and Anjanabai from Mahalaxmi Temple, Kolhapur, the killing of this child in the last week of May by Anjanabai on the suggestions given by the accused, in a taxi, on the road leading to Surat and the disposal of the dead body of Shradha by accused no.1. For these incidents accused have been convicted and sentenced as under :-

(i) For the offence punishable under Section 302 read with Section 120-B of the Indian Penal Code, the punishment being death by hanging subject to confirmation by the High Court.

(ii) For the offences punishable under Sections 363, 364 read with Section 120-B of the Indian Penal Code, the sentence being rigorous imprisonment for 3 years with a fine of Rs.2000/- each, in default to suffer rigorous imprisonment for 1 year each, on each count.

(iii) For offence punishable under Section 201 read with Section 120-B of the Indian Penal Code, the sentence being rigorous imprisonment for 5 years with a fine of Rs.5000/- each, in default to suffer rigorous imprisonment for 2 years each, on each count.

(H) The kidnapping of the child **Krant**i aged about 9

years by the accused from the house of her father on 29.8.1995 and the killing of Kranti by the accused in the sugar crane crop situated on a land near Narsoba-wadi, Dist-Kolhapur. For these incidents, the conviction and sentence of the accused are as under :-

(i) For offences punishable under Sections 363, 364, 365 read with Section 120-B of the Indian Penal Code, the sentence being rigorous imprisonment for 3 years with a fine of Rs.2000/- each, in default to suffer rigorous imprisonment for 1 year each, on each count.

(ii) For offences punishable under Sections 342, 343, 344 read with Section 120-B of the Indian Penal Code, the sentence being rigorous imprisonment for 1 year with a fine of Rs.5000/-, in default to suffer rigorous imprisonment for 6 months each, on each count. (It may be mentioned here that by partially dis-believing the story of the approvar Kiran Shinde (PW 1) in respect to the murder and disposal of the dead body of Kranti, the trial court has acquitted the accused of the charges under Sections 302 read with Section 120-B of the Indian Penal Code as well as the charge under Section 201 read with Section 120-B of the Indian Penal Code.

(I) The attempt to kidnap a child by the name of

Devli from Rani Laxmibai Primary school, Nasik on 10.10.1996 by the accused. For this incident, the accused have been convicted as under :-

(i) Under Sections 363, 364, 365 read with 120-B of the Indian Penal Code, the sentence being rigorous imprisonment for 3 years with a fine of Rs.2000/-, in default to suffer rigorous imprisonment for 1 year each on each count. (It is noted here that though the charge was for an attempt, the conviction appears to be wrongly made for the offence of kidnapping and its aggravated forms without the use of section 511 of the Indian Penal Code.

(J) The kidnapping of a girl child named **Gauri @ Bhavna** aged about 1 & 1/2 years on 3.1.1996 by the accused and Kiran from the Ganga ghat vegetable market in Nasik, killing of this child by Anjanabai at the instigation of accused no.2 on 12.5.1996 at Pallavi Lodge, Kolhapur and the disposal of the dead body of this child on the same day in the womens lavoratory in Usha Theatre situated near the said lodge. For these incidents, the accused have been convicted and sentenced as under :-

(i) For the offence punishable under Section 302 read with Section 120-B of the Indian Penal Code, the sentence being death by hanging subject to confirmation by the High court.

(ii) For the offences punishable under Sections 363, 364, 365 read with Section 120-B of the Indian Penal Code, the sentence being to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.2000/-, in default to suffer rigorous imprisonment for 1 year each, on each count.

(iii) For the offences punishable under Sections 342, 344 read with Section 120-B of the Indian Penal Code, being sentenced to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.5000/- each, in default to suffer rigorous imprisonment for 6 months each on each count.

(iv) For the offence punishable under Section 201 read with Section 120-B of the Indian Penal Code, being sentenced to suffer rigorous imprisonment for 5 years with a fine of Rs.5000/-, in default to suffer rigorous imprisonment for 2 years each.

(K) The kidnapping of a male child named **Pankaj** aged about 4 years on 27.7.1996 from Vithal Mandir, Wadala, Mumbai by the accused, killing of this child in September-1996 in the house of Indirabai Mahimkar situated at Shivshahi Apartment, Kothrud, Pune and the disposal of this child in a gunny bag thrown in the area of Karve Nagar in Pune. For these incidents, the accused have been convicted and

sentenced as under :-

(i) For the offences punishable under Section 363, 364 and 365 read with Section 120-B of the Indian Penal Code, the sentence being rigorous imprisonment for 2 years with a fine of Rs.2000/-, in default to suffer further rigorous imprisonment for 1 year each, on each count.

(ii) For the offences punishable under Sections 342, 344 & 346 read with Section 120-B of the Indian Penal Code, the sentence being rigorous imprisonment for 1 year with a fine of Rs.5000/-, in default to suffer rigorous imprisonment for 6 months each, on each count.

(iii) For the offence punishable under Section 201 read with Section 120-B of the Indian Penal Code, the sentence being rigorous imprisonment for 5 years with a fine of Rs.5000/-, in default to suffer further rigorous imprisonment for 2 years each, on each count.

. (It may be stated that as regards each of the aforesaid incidents pertaining to kidnapping and murder, there was also a charge relating to the substantial offences read with Section 34 of the Indian Penal Code but the conviction has not been made with the aid of Section 34).

2. The brief prosecution case sought to be brought on record through the evidence of approvar Kiran Shinde (PW 1) as also through 155 other witnesses examined by the prosecution and several documents, narrated in a chronological sequence was as under :-

(a) that (PW 1) approver Kiran is a person who hailed from Pune. He was educated upto the 7th standard but left his school in the year 1982 when he was in the 7th standard. On leaving school he was learning the work of tailoring in the shop of one Suresh Tailor in Hadapsar area. While he was so working in the tailoring shop he came into contact with accused no.1 Renuka in 1983. Kiran fell in love with Renuka and consequently on 17.12.1989 he married Renuka at Shirdi in the temple of Saibaba. Subsequently, in the year 1990 Kiran and accused no.1 Renuka alongwith accused no.2 Seema, Ashish, the son of Renuka from her first marriage and Anjanabai came to reside as tenants in the house of one Saste at Gondhalinagar situated in Hadapsar area of Pune. Anjanabai, Renuka and Seema were thieves who used to commit theft of articles like mangalsutra, indulged in chain snatching and the entire family as aforesaid used to maintain itself out of income derived from such thefts. In such circumstances, the first of 3 children of Renuka & Kiran i.e. Kishor was born on 23.3.1991, the second

son Tushar was born on 6.2.1994 and the 3rd son Gaurav was born on 19.1.1995.

HATCHING OF A CONSPIRACY :-

. That in April-1990, while the aforesaid family was residing in the house of Saste, Kiran, accused no.1 Renuka and Ashish had gone to Chatursinghi for darshan. At that place Renuka who was with Ashish tried to snatch a purse from a person in the mob but was caught by the said person. Renuka started to raise a hue and cry and she gave abuses to the person who had caught her asking him as to why he was holding his hand when she was having a child with her. Many persons gathered at the spot and helped in getting Renuka released. The person who had caught Renuka, seeing the mob gathering, left the spot. In the month of June-1990, Kiran, Renuka and Seema had a meeting in the house of Saste in which Renuka narrated the incident that had occurred in Chatursinghi and as to how she had got herself released by taking advantage of having a child with her. By that time, Anjanabai has been arrested in about 15 to 16 cases of theft, Renuka had been arrested on about 5 to 6 occasions and even Seema had been arrested on 2 to 3 occasions. Renuka raised an issue as to what was required to be done to evade such arrests. It was concluded by them at that meeting that if small children could be taken

with them at the time of incident of theft, they could, if caught, get the sympathy of persons and there was a reduced possibility of being involved in the offence. They decided to kidnap small children below 5 years of age as such children would not be able to follow what was going on and would not be in a position to speak out. They arrived at this device to reduce the possibility of arrest. They decided to kidnap such children from public places such as railway stations, temples, fairs, public gardens etc. as such places usually had a big crowd. They further decided that if the children caused any trouble in the course of their work or if there was any possibility of their being involved by such kidnapped children then the children would be killed. It is the prosecution case that a criminal conspiracy to kidnap and kill was thus hatched by Kiran, Renuka and Seema in this meeting and in pursuance of this criminal conspiracy, from June-1990 to October-1996, the accused, Anjanabai and Kiran kidnapped 13 children from various public places like Thane, Kalyan, Mumbai, Nasik, Kolhapur etc., attempted to kidnap one child and killed 9 of the children whom they had succeeded in kidnapping.

INCIDENTS RELATING TO SANTOSH :-

(b) That after the hatching of the aforesaid conspiracy in July-1990, the accused and Anjanabai

had gone to Kolhapur. There, Renuka met a female begger with a child on the S.T.stand. She gave an assurance to that begger that she would get her a job and under this pretext brought her to Karad. There, Renuka took the child, gave a slip to the begger and alongwith Seema and Anjanabai returned to their house at Pune alongwith this child who was named by them as Santosh. Later in July-1990 Renuka & Seema had gone to Shirdi for the purposes of committing thefts. Kiran remained behind in the house of Saste at Pune. As Renuka and Seema did not return for 5 to 6 days, Anjanabai alongwith Ashish had gone to Shirdi in order to find out as to what had happened to them. About 6 to 7 days thereafter, Shirdi police alongwith Anjanabai, Renuka & Seema came to the house of Saste at Pune alongwith the 2 children Ashish & Santosh. Renuka, Seema and Anjanabai had been arrested by the Shirdi police for theft and they had come to take the search of their house at Pune. Upon taking search the police attached various stolen items like tape-recorder, T.V., Camera and some ornaments. Kiran gave some amount to the Shirdi police in order to evade his arrest. After some time, Renuka, Seema and Anjanabai alongwith 2 children were transferred by the Shirdi police to the Pune police and were kept at the lock-up of Faraskhana police station at Pune. In the month of February-1991 Renuka was released from jail. She came out of the jail alongwith child

Ashish. After about 4 to 5 days, Seema was also released from jail. In the first week of March-1991 Anjanabai was released from jail and Santosh came out of the jail alongwith her. On 23.3.1991 Renuka delivered her first child Kishor. On 14.4.1991 Kiran, Ashish, Kishor, Santosh, Renuka, Seema & Anjanabai left for Kolhapur in order to commit petty thefts. They halted at Mahalaxmi Dharmashala at Kolhapur where they reached at about 8.00 P.M. The room in the Dharmashala was taken in the name of Seema. After keeping their articles in the room, they proceeded towards Mahalaxmi temple where a crowd was likely to gather in the evening. Kishor was with Kiran and Ashish was with Renuka, Anjanabai was carrying Santosh. Seema attempted to snatch a purse from one person but was caught and beaten. Anjanabai then intervened and threw Santosh on the ground. Santosh fell down and sufferred a bleeding injury on his head. Many persons gathered on the spot and due to the pleas and apologies of Anjanabai and on seeing the bleeding wound caused to the child Santosh, the matter was not carried further to the police. Renuka then suggested that they should go to Kolhapur S.T.stand for committing further thefts. They accordingly, came to Kolhapur S.T.stand at about 11.00 P.M. Renuka & Seema alongwith Kishor & Santosh had gone to commit theft while Kiran & Anjanabai were sitting in one corner of the S.T.stand alongwith Ashish. After about 1 & 1/2

hours, Renuka & Seema alongwith the children returned back alongwith 2 to 3 purses. They purchased Wada-pav and while they were eating Wada-pav, Santosh started to cry. Renuka told Kiran that the child was crying because it has sustained injury due to being dropped by Anjanabai. She told Kiran that the child was not useful as it was attracting the attention of the persons while theft was being committed. Seema then told Anjanabai that because of the child Santosh, there was a possibility of arrest and therefore, it was better to put an end to his life. Anjanabai then pressed the mouth of Santosh and dashed his head repeatedly on the iron bar which had been put in place for the benefit of passengers. Santosh sustained further injuries on his head. There was oozing of blood from his head and his clothes were sustained with blood. While she was killing the child Santosh, Renuka & Seema were sitting at a distance of 10 feet and were eating wada-pav. Santosh died on the spot. Anjanabai then removed the clothes from the person of Santosh and told Seema to go to the water tap and to wash his clothes. Seema accordingly, washed the clothes of Santosh. Renuka then told Kiran to search for a lonely place for disposing the dead body of Santosh. Kiran then came out and found such a place. He carried the dead body of Santosh on his shoulders and alongwith Anjanabai and Renuka came out of the S.T.stand. At a walking distance of

about 15 minutes, one scraped rikshaw has been parked. They kept the dead body of Santosh near the scraped rikshaw. They returned back to the S.T.stand in a rikshaw where they collected Seema and told the rikshaw driver to take them back to Mahalaxmi Dharmashala. On coming near the Dharmashala they had a quarrel with the rikshaw driver but the quarrel was settled by paying Rs.60/- to him. They stayed in the Dharmashala thereafter for 4 days and then left the Dharmashala. In the meanwhile, in the morning of 15.4.1991 one Hemgiri Bankar found the dead body of Santosh and reported the matter to (PW 53) Ashok Baburao Yenechavandikar who was a police head constable attached to the Laxmipuri police station. The said constable registered an accidental death under A.D.No.26/91. After recording the accidental death, he handed over the investigation to (PW 58) Piraji Ganpat Kamble who proceeded to the spot where the dead body was lying alongwith Hemgiri and took the dead body of the child in his custody under panchanama. Photographs of the dead child were taken. However, inspite of his best efforts, no accused could be traced in the said case and on failure to trace the accused the said witness submitted an A-final report to the court.

INCIDENTS RELATING TO NARESH @ KALPESH @ ANIKET :-

(c) After the murder of Santosh, sometime in April-1991, the entire family of the accused shifted to the room of one Indubai Shinde in Pune. After shifting, from April-1991 to December-1991 the accused & Anjanabai used to go out for committing theft and Kiran used to stay in the house for maintaining Ashish & Kishor. On one such occasion, in the month of December-1991 the accused, Anjanabai and Kiran left Pune for Thane by S.T.bus. They reached Thane at about 11.00 P.M. and near the S.T.stand they saw one lady sitting with a child. They went towards the lady and cultivated a friendship with her. Renuka was talking with the said lady. At about 1.15 a.m. the child began to cry and Renuka told the child’s mother that the child would stop crying if she held the same. The lady agreed and handed over the child to Renuka. After a while, the lady told Renuka that she wanted to bring milk for the child. Accordingly, she went to bring milk and at that instant, Renuka and others decided to run away from the spot with the child, came out of the S.T.stand and engaged a rikshaw which took them to the S.T.stand of Bhivandi. They reached Bhivandi at about 3.30 a.m. and from there they came to Pune by S.T.bus. The child kidnapped by them was aged about 8 to 9 months and was named as Naresh. On 28.8.1992 the accused alongwith Anjanabai, Kiran and 3 children including Naresh had gone to Nasik to attend the fair of Kumbh mela.

They had plan of committing thefts at the fair. However, on reaching Nasik, Naresh became sick and started to cry. Renuka who had developed a special affinity for the child Naresh as he was suckling on her person, suggested that Naresh should be released. Naresh was accordingly left near the Ram-kund temple at Nasik. The family stayed at Nasik for a day and came back to the room of Indubai Shinde at Pune thereafter. On the morning of 28.8.1992 (PW 107) Ratnamala Powar who was a lady head constable had gone to the area of Ram-kund temple at Nasik. She saw Naresh raising a hue & cry. A mob was gathered on the spot. She made enquiries about the parents of the child but there was nobody to claim the child. She took Naresh to Panchavati police station and filed a report about the finding of the boy to the Police Inspector. Naresh was then taken to the Civil hospital, Nasik for medical examination, as such an examination was required before admitting him to the childrens' Home. Naresh was in the Civil hospital till 2.2.1992 and there he was examined by (PW 91) Dr.Kanchan Desale. On medical examination, Naresh was found to have an abrasion on his left frontal region 1 cm x 1 cm and an abrasion on the right side of his abdomen (illic fossa) 2 cm x 2 cm. On release from the hospital, after obtaining an order from the Juvenile Justice Board, Naresh was remanded to the Adhar ashram which was a public charitable

trust situated at Nasik. He was remanded to the institution from 29.1.1992 and was being brought up in the said institution as a Hindu child. He was admitted in the institution in the name Kalpesh. (PW 106) Vishnu Khalage and his wife Vimal led a barren existence at Nasik. They yearned to have a child and decided to adopt one. They visited the Adhar ashram and chose Naresh for adoption. On 14.7.1993 Vishnu Khalage filed an application for being appointed as the guardian of Naresh under Section 8(4) of the Guardians & Wards Act r/w Hindu Adoption and Maintenance Act in the court of the District Judge at Nasik. He also obtained interim custody of the child from the court and after obtaining interim custody, changed the name of the child to Aniket. In the meanwhile, Renuka started pressing Kiran to find out as to what had happened to Naresh. Kiran had come to Nasik and he made an attempt to search for Naresh. He also visited Adhar-ashram. The officer of the Adhar ashram however told him that the child had been given to Vishnu Khalage. Kiran went back to Pune and conveyed this news to Renuka. In or about December-1993 the accused, Kiran & Anjanabai decided to go to Nasik in order to claim the custody of Naresh through the court. They engaged (PW 96) Advocate Jayprakash Kasaliwala to file an application in the court on their behalf. Accordingly, in Civil Misc.Application No.214/93

already filed by Vishnu Khalage, Anjanabai styling herself as Shantabai Patil Gavit submitted an intervention application on 17.12.1993. In this application she claimed that the child Naresh @ Kalpesh was the child of her neice by name Rekha. On 7.6.1994 she filed her say in the main Civil Misc.Application No.214/93 and also filed a separate application on the same day for grant of interim custody of the child. In these applications, the child Naresh has been described as Kalpesh which was the name given to the child by the institution. Anjanabai claimed that she was a blood relation of the child which belonged to her neice Rekha. On the application for interim custody the court passed an order on 13.6.1994 refusing the grant of interim custody as the interim custody of the child had earlier been given to Vishnu Khalage. On 4.7.1996 Renuka again approached (Pw 96) Advocate Jayaprakash Kasaliwala and informed him that Naresh was really her twin son. Advocate Kasaliwala told her that he had already accepted the Vakalatnama of her mother and was therefore not in a position to accept her Vakalatnama. He suggested that she should contact Advocate Shetye. He called Advocate Shetye to his chamber and the 2 Advocates confirmed the facts. Accordingly a second intervenor's application on behalf of Renuka was filed by Advocate Shetye on 4.7.1996. In this application, Renuka claimed to be the real mother of Naresh whom she claimed to be her

twin son. This is a fact which was sought to be falsified by the prosecution by examining Dr.Sanjay Bidiye who had delivered the 3 children of Renuka. Ultimately, applications made by Anjanabai and Renuka were dis-allowed and by his final order dated 6.10.1997 the IInd Extra Joint District Judge, Nasik allowed Civil Misc. Application No.214/93 filed by Vishnu Khalage and appointed him as the natural guardian, further permitting him and his wife to take Naresh @ Kalpesh in adoption. After adoption they named this child as Aniket.

INCIDENTS RELATING TO BUNTY, SWATI, GUDDU & MINA :-

(d) In the last week of March-1993 the family of the accused left the house of Indubai and went to reside at Labade chawl situated in Shastri Nagar, Kothrud, Pune. They had purchased a Fiat car on 15.1.1993. They started using the said Fiat car in April-1993 for visiting places to commit theft. In April-1993 they had gone to Kalyan in their Fiat car with the aim of kidnapping children and committing theft. They parked their car near the railway station at Kalyan and thereafter accused and Anjanabai had gone to the railway station at Kalyan to see if there was any opportunity of kidnapping children. Kiran, Ashish and Kishor were waiting in the car. The accused and Anjanabai returned after about a hour alongwith a boy aged 1 & 1/2 years and a girl aged

about 2 & 1/2 years. They informed Kiran that they had kidnapped these children from the plat-form of Kalyan railway station. These 2 children were crying and they were carried by the family to their house at Labade chawl. Renuka named these children as Bunty & Swati. These 2 children were being used by the accused for committing thefts. The girl child Swati was not liked by Renuka and hence, within about 2 & 1/2 months she was abandoned by the family in the bazar at Loni Karbhor on Solapur road at Pune. Within 15 to 20 days of kidnapping Bunty & Swati the family had visited V.T.station at Bombay. They reached V.T.station at about 8.30 P.M. Again the accused and Anjanabai had been to the plat-form to kidnap children. They had taken Bunty alongwith them. The approver remained seated in the car. The accused and Anjanabai returned after about half an hour alongwith 3 children. One child was aged about 2 to 2 & 1/2 years, another was aged about 9 to 10 years and there was one girl aged about 2 to 3 years. They put these children into the Fiat car and started to proceed to Pune. The boy who was aged 9 to 10 years, being old and able to talk properly, was released by the family at S.T.stand Panvel. The remaining 2 children were brought by the family to Pune and were named by Renuka as Guddu and Meena. These children were also being used for the purpose of committing thefts alongwith Banti & Swati. In due course Banti & Guddu became sick.

Banti became sick on account of sustaining an injury which became septic. Guddu became sick on account of loose motions. Their illness caused these two children to often raise a hue & cry and therefore, the family decided to kill these 2 children. However, before killing them, they decided to shift out of Labade chawl and accordingly in June-1993 they obtained premises at Mathwad chawl situated at Azad Nagar, Pune. In May-1993, with a view to kill Bunty & Guddu the accused, Anjanabai and Kiran proceeded from Pune towards Khopoli in the evening. On the way at about 11.30 P.M. they stopped the vehicle in Khandala ghat. Kiran got down from the vehicle. Bunty & Guddu were asleep. Bunti was with Renuka and Guddu was with Seema. Renuka pressed the neck of Bunty and similarly Seema pressed the neck of Guddu. Anjanabai then got down from the vehicle and threw the dead body of Banti in to the valley. She told Kiran that it was not sensible to drop both the dead bodies at the same place and therefore, they took the vehicle to Shil-phata by proceeding towards Khopoli. Near Shil-phata Anjanabai got down from the vehicle and dropped the dead body of Guddu on the side of the road. They then returned to their house at Labade chawl at Pune. They reached Pune early in the morning and on the same day engaged a tempo to shift their house-hold articles from Labade chawl to the new house at Mathwad.

. On 30.6.1993 the dead body of Guddu was found by one Prakesh Choudhary near village Mil situated near Shil-phata. He reported the finding of the dead body to (PW 94) Maruti Tamane who was the PSO at Khopoli police station. The police registered A.D.No.10/93. (PW 94) visited the place where the dead body was lying, took out photographs, prepared a panchanama in the presence of panchas and found injuries on the dead body of the child. He sent the dead body for post mortem. Advance death certificate was issued by the Doctor which mentioned that the death of the child was caused due to strangulation and axphyxia. On receipt of such a certificate, (PW 94) Maruti Tamane registered a crime for an offence under Section 302 of IPC, under C.R.No.101/93. Eventually, the investigation was taken over by (PW 144) Vithoba Gavali who was then the Dy.S.P. attached to CID crime branch, Nasik. The Dy.S.P. obtained all the papers of investigation which included the post mortem notes, seized the fiat car belonging to the family of the accused from a garage in Karve road, Pune, recorded several statements and handed over all the papers to (PI) Bodhe, the Chief investigating officer in the present case. After having shifted to Mathwad chawl, an incident occurred on 6.7.1993 in which the police rescued the remaining girl Mina from the clutches of the family. On 6.7.1993 at about 4.00 P.M. (PW 82) Shyamrao Shinde, who was a driver in

MSEB, had gone to Mathwad chawl in connection with the grievance relating to electric supply in that area. There were 3 technicians with him. He stopped his vehicle in front of Mathwad chawl and the technicians went to work. While he was waiting in the vehicle, he heard the cries of a child from room no.2 of Mathwad chawl. There was a lock from outside the door of that house and even the windows were also closed. On hearing this noise, he got down from the vehicle, took a stool and opened the door through the ventilator. He found a girl aged about 3 to 4 years who was alone and crying in the room. There was a swelling on the face of the girl and there was a bleeding injury on her forehead which was also swollen. In the meanwhile, the owner of the chawl also came there. The small girl was crying out for her mother. This witness and the technicians left the spot after completion of their work. However, the owner of the chawl (PW 102) Dattatray Mathwad reported the incident to Shastri Nagar police station. (PW 115) Suresh Bhagwat who was the PSO, came to the room alongwith a constable and when he arrived, he found that the room was open. The door was however, shut from inside and when the police knocked and entered, they found Anjanabai with 3 children in the room. They took search of the room and found ornaments worth Rs.50,000/-. Anjanabai and the children were removed to the police station. The PSI Suresh

Bhagwat found injuries on the girl. The police arrested Anjanabai and Seema in connection with this incident and sent the child Meena for medical treatment. (PW 115) then handed over the investigation to PI Powar attached to the Kothrud police station. In the course of this investigation, while the police had custody of these accused recovery of ornaments worth Rs.62,147/- was made and 2 new offences of theft pertaining to the Deccan Police station were detected. As far as Mina was concerned, (Pw 176) Dr.Kishor Chabukswar on medical examination, found 6 injuries in the nature of abrasions and contusions on her body. He opined that the same were caused by a hard and blunt object within 2 to 5 days. Kiran & Renuka who had not been arrested in this crime left Mathwad chawl on 15.7.1993, on which day (PW 102) Dattatray Mathwad returned the deposit amount of Rs.28,000/- after deducting Rs.6000/- towards rent. Then they resided temporarily at 2 different places at Pune city and ultimately, during the Ganpati festival of 1994 (Middle of September-1994) they shifted to the room of one Khopade in the Gondhalinagar area situated in Hadapsar area of Pune.

INCIDENTS RELATING TO PINKI @ ANJALI :-

(e) While the family was residing in the house of Khopade as aforesaid, during the period of Navratri,

the accused, Anjanabai, Ashish, Kishor & Tushar had gone to Nasik for committing thefts and for kidnapping other children. They returned to Pune after 7 to 8 days. During this period, Kiran continued to stay in the house of Khopade. On 18.10.1994 (PW 10) Sujata Diwan had gone to Kalika mandir situated on Agra road at Nasik. She was accompanied by her husband and her 2 daughters Sheweta and Anjali. At that time, Anjali was aged about 2 to 2 & 1/2 years. At the temple, Sujata went ahead for performing Pooja and filling the oti of the deity. Her child Anjali was with her husband. For the purpose of giving her articles of pooja, her husband kept Anjali on the ground and went towards her. After the prayers, her husband took pradakshina around the deity. When he returned, he found that Anjali was missing. They searched for the child the entire night up to 8.00 A.M. in the morning. Thereafter Sujata became unconscious. When she regained consciousness, they went to the police station and gave information to the police, which was recorded by (PW 9) PSI Mahadu Saundane who was then attached to the Satpur police station. On the basis of this information, a missing entry bearing no.70/94 was registered by the police. Later, on 1.11.1996 the father of the child (PW 62) lodged a complaint of kidnapping with the Panchavati police station, which was recorded under C.R.303/96 for offences under Sections 363, 364 r/w

34 of IPC against the present accused and Anjanabai. Before this complaint of kidnapping was recorded, accused and Anjanabai had already been arrested in another case of kidnapping. In the meanwhile, the accused, Anjanabai and the children had returned to the house of Khopade in Pune alongwith Anjali. Renuka narrated the manner in which the child had been kidnapped to Kiran and on her say, Kiran named the child as Pinky. Pinky remained with the family for about 1 to 1 & 1/2 months. Kiran used to move Pinky on his bicycle whe she used to raise hue & cry. Pinky was killed in November-1994 in the room of Khopade at Gondhalinagar. The reason why she was killed was that she used to always remain sick and used to frequently cry. On one such occasion, while Pinky was raising a hue & cry, Anjanabai remarked that she was of no use. She pushed Pinky @ Anjali down the staircase of the house. Pinky started crying loudly. At this stage, Kiran, Anjanabai & Renuka came down the staircase. Anjanabai pressed the mouth of Pinky, when her hands and when the child’s legs started shaking in a death spasm, they were caught hold of by Renuka. Seema was witnessing this incident. She started pressing the mouth and nose of Pinky. Pinky @ Anjali died at the spot. Kiran was standing near the staircase and witnessing this incident. That after killing Pinky @ Anjali, Renuka removed the clothes of the child and the dead body was put in a bag. After having meals, Kiran,

Anjanabai and Renuka, at about 1.30 A.M. took the dead body and had gone along the Saswad road upto the canal where the body was dropped in some shrubs near a compound wall. Thereafter they returned to the house of Khopade. (PW 22) Rajendra Sankpal was running a Nursery adjacent to the canal near Saswad road. On 23.11.1994 while he was going towards his nursery, he saw some persons gathered outside his nursery. He entered the mob and saw the dead body of a child aged about 2 years. He saw ligature marks on the neck of the dead body. He went to the Hadapsar police chowky and filed a report. The report was reduced to writing by (PW 25) Narsinh Kendgale who was then the police head constable attached to Hadapsar police chowky. This police officer went to the spot. He prepared a panchanama of the spot (PW 24) Raghunath who was the photographer who had accompanied him, took 3 photographs of the dead child (Exh.89, 90 & 91). The police officer sent the dead body to the Sasoon hospital where he prepared a separate inquest panchanama. He then handed over the investigation to PSI Mujawar. (PW 131) Dr.Laxmikant Bade conducted the post mortem on the body of Pinky @ Anjali. He found 10 antemortem injuries on the body of the child. There was fracture of the teeth, contusion on both the lips, abrasion on the mouth & chin and contused abrasion on the neck, linear imprint abrasion on sternal notch, faint ligature

mark, linear abrasion on neck and contusion on middle back. He opined that the cause of death was asphyxia as a result of smothering. He accordingly, prepared the post mortem notes.

INCIDENTS RELATING TO RAJA @ SWAPNIL :-

(f) In March-1995 a male child was kidnapped from the S.T.stand at Kolhapur. The entire family had gone from Pune to Kolhapur for the purposes of effecting a kidnapping. At the S.T.stand at Kolhapur, at about 3.00 P.M. they came across (PW 112) Sharmila Godgire. Sharmila was with her son by name Swapnil. Renuka approached this lady and enquired from her as to where she wanted to go. Sharmila informed Renuka that she wanted to go to Talandage. Renuka was sitting and talking to this lady. Renuka took her son by saying that she was going to buy a banana. She gave Sharmila her basket contained a towel. Renuka did not return. Sharmila started searching for her son but could not trace him. Her son was wearing silver rings on his wrists and gold muddis in his ears. Sharmila then went to the police station and lodged a complaint of kidnapping. The said complaint was registered under C.R.No.54/95 under Section 363 of IPC by (PW 110) PHC Baburao Hukkeri who was attached to the Shahupuri police station. After some investigation, PHC Hukkeri handed over the investigation to (PW

111) PSI Ajit Khadake. PSI Ajit Khadake attached the basket and towel which was given by Renuka to Sharmila. After kidnapping the child, Renuka met Kiran and they all together fled from the S.T.stand and went into Kolhapur city. At about 10.00 PM on that day they returned to the house of Khopade. They named the newly kidnapped child as Raja. The said child was aged only about 7 months. The said child was with them for only about 8 days. After about 8 days of the kidnapping, once Seema was moving in the house with the child Raja and the said child started crying. She dropped Raja on the flooring of the house and the said child died instantly. Kiran, Renuka and Seema then carried the body of the child into the area of Khandala ghat. They went to Khandala ghat in a hired jeep. The body of the child was dropped at Khandala ghat at about 10.00 P.M. in the darkness. The said body was never recovered thereafter.

INCIDENTS RELATING TO SHRADDHA @ BHAGAYSHRI :-

(g) In the last week of April-1995 the accused and Anjanabai had gone to Kolhapur for kidnapping children. Kiran remained in the house of Khopade at Pune. At Kolhapur, on 24.4.1995, the accused, Anjanabai and 2 children who accompanied them checked into the Mahalaxmi Dharmashala at about 8.20 P.M. They booked a room for 3 days and the booking

was done in the name of Seema. The other 2 ladies gave their names as Vaishali Kiran Shinde and Kamla Raju Bhor. They were given room no.4 in the Dharmashala. They had a quarrel with the Manager (PW 45) Ganesh Une over the lack of cleanliness of the room. The room was then cleaned. The 3 ladies alongwith 2 children left the room at about 10.00 A.M. by telling the Manager that they would return at about 2.00 P.M. Then they went Mahalaxmi temple. (PW 33) Vijaya Mali had come to the Mahalaxmi temple alongwith her grand-child Yogesh aged about 5 years and her grand-daughter Bhagayshri aged about 1 year & 9 months. The mother of these children Jyoti was serving in Karnataka State but had come to Kolhapur for completing her M.A. She used to be in the college for the entire day and the children used to be left in the custody of the grand-mother. At the temple while (PW 33) Vijaya was taking darshan, Bhagayshri was lost in the area of temple. The child was wearing a gold earring on her person and silver chains in her legs. The said child was kidnapped by the accused and Anjanabai. (PW 33) Vijaya lodged a missing report with the Juna Rajwada police station which came to be recorded by (PW 35) Najir Mayandar. The police attempted to search for the child but could not trace the child. The accused and Anjanabai alongwith the 2 children and the newly kidnapped child returned to Mahalaxmi Dharmashala at about 11.00 A.M. They informed the

Manager (Pw 45) that they were leaving the room and after receiving the deposit amount, these 3 ladies, 2 children and one girl left the lodge. After leaving the lodge, all these persons returned back to their residence in the house of Khopade at Pune. They narrated the manner in which child was kidnapped to Kiran. The child was re-named as Shradha and they lived together for about 1 & 1/2 months and during this time, Shradha was used for committing thefts. The family had gone to Surat, Ahmedabad and Baroda with Shradha and other children to commit thefts. On their first trip to Surat they had halted at Sahil Lodge where a room was taken in the name of Seema. They stayed in the said lodge for 4 days, during which period, accused, Anjanabai & Shradha committed thefts at Surat. During these periods, Kiran used to look after the children by staying in the lodge. After leaving this lodge, Kiran went to Pune to attend the marriage of his friend whereas the ladies and these children proceeded to Ahmedabad. At Ahmedabad they halted at the Revabai Bhai Shankar Dharmashala for 5 days. They committed thefts at Ahmedabad by using Shradha and earned large amounts. From Ahmedabad they came to Baroda and after staying in Baroda for 3 days, they returned to Pune. From this trip the family earned about Rs.40,000 to Rs.45,000/- and also collected several gold and silver ornaments. After about 3 days of staying in the house of Khopade,

Renuka suggested that the family should go to Thane and Bombay for committing thefts. They then went towards Thane and Bombay by a S.T. bus. On the way Shradha became sick and Renuka suggested that her life should be ended. This proposal was accepted by Anjanabai and Kiran. At the S.T.stand at Thane, Renuka told Kiran to search for a taxi to go to Surat. Kiran engaged one taxi and they all then proceeded towards Surat at 11.00 P.M. in the night. While the taxi was proceeding, Anjanabai pressed the neck of Shradha with her feet and killed her. Kiran was sitting on the front side alongwith the taxi driver, whereas the accused Anjanabai and children were sitting on the rear side of the taxi. Kiran heard the noise of a low hiccough while the taxi was running. Renuka touched him with her hand and confirmed that the child had been killed and indicated that it was necessary to stop the taxi. Kiran stopped the taxi under the pretext that the ladies wanted to attend natures call and suggested to the taxi driver that they should halt at some distance. Kiran and taxi driver went ahead for about 1/2 furlong. During this time, the child was dropped by the accused and Anjanabai. On the return of Kiran and the taxi driver, Renuka twinkled her eye by way of a signal to Kiran to indicate that the body of Shradha had been dropped and thereafter they proceeded onward in the same taxi. At Surat, they once again halted at Sahil lodge. They stayed at

Sahil lodge for 3 to 4 days and committed several thefts and earned about Rs.10,000 to Rs.12,000/- before returning to Pune. After the killing of Shradha they stayed in the house of Khopade at Pune for about 3 months and left the said house in August-1995 after receiving Rs.10,000/- by way of refund of deposit.

INCIDENTS RELATING TO KRANTI :-

(h) After leaving the house of Khopade, the accused alongwith Anjanabai, Ashish, Kishor, Tushar and Gaurav went to stay at Nasik. They left because they felt that the police were keeping a watch on them. Kiran started residing separately in one room in Pune. The ladies and children started to reside in the flat of one Makwana in front of the office of the telephone exchange at Nasik. Kiran used to visit them from time to time when he needed money. While they were staying at Nasik on 29.8.1995 at about 9.30 P.M., the accused went to the house of (PW 21) Pratibha Mohan Gavit. Pratibha was the 2nd wife of the father of the accused Mohan Gavit. Mohan had earlier been married to Anjanabai. The accused told (PW 21) Pratibha and their father Mohan that they would like to take Kranti with them to meet their mother Anjanabai. Mohan Gavit raised an objection on the ground that Kranti was under- going her examination. However, on the accused pressing

him, he gave his consent to the accused to carry Kranti with them. The accused gave them their address at Nasik. Thereafter both the accused left alongwith Kranti in a rikshaw. They however, did not return Kranti on the next day and when (PW 21) and Mohan took search of the address given to them, they could not trace the accused or their daughter Kranti. Kranti was noticed by Kiran on one of his visits to the flat where the ladies were staying. Kiran enquired from Renuka as to who this girl was and as to why she had been brought to reside with them, to which, Renuka replied that Kranti was her step-sister and she had been brought by them because her mother wanted to take revenge on Mohan Gavit for abandoning her. On 5.12.1995 the accused Anjanabai alongwith Kranti and the children came to the room of Kiran Shinde at Pune. They reached the said room at about 8.30 P.M. Renuka told Kiran that she wanted to kill Kranti and that Kiran should come alongwith them to Kolhapur. Kiran agreed to this suggestion. On the very day, Kiran alongwith accused, Anjanabai and all the 4 children started to go to Kolhapur from Pune. After reaching the S.T.stand at Kolhapur, Renuka told Kiran that there was a fair going on at Narsoba-wadi and that the family should proceed there in order to commit thefts. They had reached Kolhapur early in the morning at 5.30 A.M. They booked a room in Maharaja lodge situated in front of Kolhapur S.T.stand. The

said room was taken in the name of Seema and they left for Narsoba-wadi immediately after freshning up. They went towards Narsoba-wadi in a taxi which they engaged from the S.T.stand at Kolhapur. They started at about 11.00 A.M. and reached Narsoba-wadi after about 1 to 1 & 1/2 hours. While they were near Narsoba-wadi, the taxi was stopped. Kiran, Renuka & Kranti got down under the pretext of eating sugar cane. Anjanabai alongwith all the children came out of the taxi and were sitting at one spot. Kiran, Renuka & Kranti entered the crop of sugar cane and crossed a distance of about 10 minutes walk from the taxi. On reaching a spot where the sugar cane was of the height of Kiran, Renuka made Kranti to lie on the ground and pressed her mouth and neck. When Kranti’s hands and legs were spasming in her death throes, they were held by Seema. Kranti died on the spot. They left the dead body of Kranti at the same spot and returned back to the taxi. They found that the taxi driver was sleeping in the taxi. Then they proceeded towards Nrusihawadi where they took a darshan of the idol of Datta. They returned after darshan and woke up the driver. The driver enquired as to where was Kranti. Renuka told him that the girl had met her mother at the fair at Nrusihawadi and she had gone away with her mother. The family then returned back to Kolhapur and reached Kolhapur at 4.00 P.M. In the same evening they started to go to Pune. Both the

accused alongwith Anjanabai and children thereafter went back to Nasik. On 20.10.1996 the mother of Kranti (PW 21) had been to the vegetable market at Nasik where she saw both the accused. She accosted them and asked them as to where was Kranti. The accused told her as the martial life of their mother had been spoiled by Pratibha, she would not get back her daughter. Pratibha came home and informed this incident to her husband. She and her husband came to the market where accused had been sighted but they could not trace the accused. Then they went to the Panchavati police station and lodged a report. (PW 142) Dilip Boraste was the PSO of Panchavati police station. On the FIR of Pratibha, he recorded C.R.No.303/96 under Section 363 of the IPC against the accused and Anjanabai. At about 5.40 P.M., on the very day he effected the arrest of the accused under a panchanama and thereafter proceeded with the investigation. It is in the course of custodial interrogation after the arrest in this case that the story of killing of various children by the accused, Anjanabai and Kiran started emerging gradually.

INCIDENTS RELATING TO DEVLI :-

(i) After the kidnapping of Kranti, an attempt was made by the accused to kidnap Devli, the sister of Kranti on 10.10.1996. On that day at about 2.00 P.M. the accused went to Rani Laxmibai Primary

school at Nasik where Devli was studying. There they met (PW 26) Sumanbai Navale who was the peon in this school and told him that they were the step-sisters of Devli and informed the peon that the sister of Devli was sick and that her mother had sent them to bring Devli with them. The peon refused to accede to this request. The accused then tried to bribe the peon by offering Rs.1000/- for the release of Devli. Not-with-standing this, the peon refused and therefore, the accused had to return back. The peon Suman then reported the matter to (PW 27) Mangala Parnerkar who was the teacher in this school. The teacher informed about the incident to the mother of Devli (PW 21) Pratibha when Pratibha had visited the school in the same evening at 5.00 P.M. On 16.10.1996 Pratibha had lodged a complaint regarding the attempt by the accused to take away her daughter, with the Panchavati police station and this incident was also investigated as a part of C.R.No.303/96 registered on 22.10.1996 after recording a detailed FIR of Pratibha. In this C.R., Anjanabai came to be arrested on 29.10.1996.

INCIDENTS RELATING TO GAURI @ BHAVANA :-

(j) In January-1996 Kiran visited the accused and Anjanabai in the flat of Makwana at Nasik. Kiran and the accused had then gone to Ganga-ghat

vegetable market to purchase vegetables on 3.1.1996. On the same day the mother of (PW 17) Chhaya had also been to the same vegetable market to purchase vegetables accompanied by her grand-daughter Bhavana. The child was missed in the market as she was kidnapped by the present accused. The grand-mother in a distraught condition, made an attempt to trace her grand-daughter but when she could not do so, she returned home weeping and informed her daughter Chhaya that Bhavana was lost. The parents of Bhavana made every attempt to search her. Ultimately on 4.1.1996 (PW 17) Chhaya filed a report with the police stating that her daughter was missing. This report was lodged with the Panchavati police station and was recorded by (PW 87) Chatursingh Rajput who was the Police head constable and PSO at the said police station. After recording the complaint he handed over the investigation to (PW 71) PHC Sahebrao Wagh. (PW 71) made an attempt to search for the missing girl. He also gave her discription in the newspaper and continued the investigation for a period of 1 year, till the same was ultimately handed over to PI Damane of the CID, Crime. In the meanwhile, after kidnapping Bhavana, the accused had brought Bhavana in a rikshaw to the flat of Makwana at Nasik. Kiran stayed in the flat for about 2 to 3 days. Renuka re-named this child as Gauri. Kiran used to thereafter frequently visit the flat of Makwana, whenever he was in need of

money and for this purpose he used to come to Pune. On 23.3.1996 it was the birthday of Kiran's son Kishor and therefore, he came to Nasik to celebrate the birthday. There was a function at which photographs were taken. He returned back to Pune after taking an amount of Rs.3000/- from Renuka. When he was at Nasik, Anjanabai and Renuka told him that Gauri was always raising a hue & cry. They planned to go to Kolhapur for committing theft. In the 2nd week of May-1996 they came to Kolhapur. They reached Kolhapur at 5.30 A.M. They went to Pallavi lodge. Cinema theatre by name Usha Theatre is situated near Pallavi lodge. The record indicates that the family checked into Pallavi lodge on 10.5.1996. (PW 80) Dayanand was the Manager of Pallavi lodge and he admitted one male, 2 females and 5 small children into the lodge at about 6.00 A.M. The single room being room no.203 was taken in the said lodge in the name of Seema. In the morning the family raised some disputes regarding the service which had to be sorted out by (PW 80) Dayanand the manager and (PW 83) the chief manager Ashok Bongale. At about 4.00 P.M. on that day (PW 80) Dayanand had gone to the room on the ringing of the bell. He found an elderly lady sitting with a girl child who was crying. He took the girl child to the balcony and gave her 2 biscuits. At about 8.00 P.M. on that day, Kiran and the accused had gone out of the lodge and returned after an hour.

On their return, Gauri started to raise a hue & cry. Anjanabai asked what should be done with this troublesome child and Seema suggested to her mother that she should kill the child. Anjanabai then pressed the throat of the child and killed her. Anjanabai then asked Seema and Renuka as to what has to be done of the dead body. Seema suggested that they should all go to see a movie and dispose off the dead body in the theatre. This was agreed to by Kiran and Renuka. Renuka then removed the clothes from the dead body of Gauri. They left the hotel with a rexine bag containing the dead body of Gauri at about 10.00 P.M. (PW 80) Dayanand saw them leaving alongwith the bag and made some enquiry as to why they were going out at such odd hours. Seema told him that they were going to watch a cinema. The manager asked them as to why such a big bag was being carried by them, to which Seema replied that the bag contained the clothes to be given to the laundry. By the time they reached Usha theatre, the picture had already started. (PW 86) Appasaheb Avati was the watchman who was sitting at the gate at the talkies. On seeing this group, he told them that the picture had already started and they would not be able to get tickets. Kiran told him to take them to the booking clerk and that he would settle the matter with the booking clerk. They managed to pursuade the booking clerk to give them tickets and went to the theatre to watch the movie. The rexine

bag with the dead body had been noticed by (PW 86) Watchman Avati. The same was with Renuka. They watched the movie till the interval and at the interval Kiran & Renuka had come out for a cup of tea by keeping the dead body with Seema. Renuka went to the Lavoratory of ladies to attend natures call. On coming back, she said that the lavoratory was in darkness and suggested that it was a good area to keep the bag containing the dead body. Kiran agreed to this proposal. 15 to 20 minutes after the interval, both the accused came out of the theatre with the bag. Seema and Renuka went to the lavoratory and dropped the dead body there. A piece from a saree of Renuka which was also in the bag was also dropped there. They returned back to the theatre and then, after collecting Seema started to leave the theatre. The watchman once again noticed them and observed that they had come late, quarreled and were now leaving early. Kiran told the watchman that there was a pain in the abdomen of his wife. Ultimately, (PW 86) Appasaheb Avati allowed them to go out. Kiran and the accused then returned back to Pallavi lodge. They resided in the said lodge even thereafter for a period of about 4 days and during this period, the staff of the lodge did not notice Gauri with them. In the meanwhile, on 13.5.1996 the dead body of the child was discovered and the partner of the theatre (PW 78) Rohit Shah was informed. He immediately telephonically informed

the Shahupuri police station. The call was taken by (PW 73) Raghunath Chougale and he directed PHC Subhash (PW 75) to proceed to the spot. Subhash (PW 75) on reaching the spot, prepared an inquest panchanama of the dead body and sent the dead body to the hospital. He called for a photographer and directed him to take photographs of the dead body. Accordingly, photographs were taken of the dead body by (PW 76) Patil. Further investigation was then handed over to (PW 88) Ravindra Salokhe, who registered the case under sections 302, 201 of IPC under C.R.No.103/96. In the hospital (PW 135) Dr.Ashwini Sadolikar conducted the post mortem. In the post mortem though no external injuries were found, the Doctor found pulmonary odema i.e. swelling over the lung. Lungs were found congested. Frothy blood was found in the lungs. Trachea contained a white coloured froth and the doctor opined that the death was caused due to pulmonary odema. After returning from Pallavi lodge, Kiran went back to stay in his room at Pune situated at Satavade and the females with the children went to stay in their room at Nasik.

INCIDENTS RELATED TO PANKAJ :-

(k) In July-1996 Renuka came to meet Kiran in Pune. She told him that it was necessary to take a room at Pune. They therefore, took 3 rooms in Shiv-Shahi

apartments Kothrud on rent from the owner Indirabai Mahimkar. The rooms were taken in the name of Renuka on execution of an agreement for a period of 11 months. Immediately on the next day, Kiran, accused and Anjanabai and the children once again came to reside together at Pune. While they were staying in this room, the family decided to go to Bombay in order to commit thefts and kidnap children. With this aim, in the last week of July-1996 they came to Wadala area in Bombay by a S.T. bus. They got down at the S.T. stand at about 6.00 P.M. While Anjanabai remained sitting near the fire-brigade office, both the accused and Kiran had gone to the area of Vithal mandir to commit thefts and kidnap children. At about 7 to 7.30 P.M. while they were near the temple of Vithal Mandir, Renuka and Seema picked up 2 purses. They then came across 2 young ladies and one child. These ladies had with them one boy aged about 3 & 1/2 years. He was standing behind those ladies and the ladies were not attentive towards the child. On seeing this situation, Seema picked up this child. She started hastily running away with the child. Kiran & Renuka rushed towards Seema. Seema put her palm on the mouth of the child. The child was stating his name as Pankaj because he was of the age where he could speak a few words. The child continued to cry out for his mother. Anjanabai gave him 2 slaps and Seema also gave him blows.

Thereafter the child began to cry and went to sleep after some time. The family then brought Pankaj to the residential flat belonging to Indirabai. In the meanwhile, the mother of the child (PW 2) Sharmila Mhamahulkar missed her child and searched for him till 9.30 P.M. She informed about this incident to her mother-in-law on the phone. Her husband (PW 4) came there. They searched the child till the morning and on the next day morning i.e. on 28.7.1996 (Pw 4) Suhas lodged a missing report with the Matunga police station, which came to be recorded by (PW 3) Shavadhar Singh. The police made an attempt to search for the child but could not find the child. The mother of the child (PW 2) was in such a disturbed state that the police could not record the statement of the mother immediately. The statement of the mother came to be ultimately recorded on 30.7.1996. The father of the child had produced the photographs of the child before the police station 3 to 4 days after lodging the complaint. The child was with the family for a period of 1 to 1 & 1/2 months and was used for the purpose of committing thefts in the area of Pune. After some time, the family found that the child Pankaj was going out of the house, talking with the neighbours and telling them that his father had a car and gave him chocolate and buble-gum. Pankaj was beaten for talking to the neighbours. When Renuka informed Kiran about the child’s behaviour,

Kiran told them that it was dangerous to keep the child with them. Anjanabai and Seema suggested that it would be better to kill this child. This was consented to by Kiran and Renuka. After this once again the child was found telling a neighbourhood lady that his father was at Bombay and had a car. The lady came to enquire with Renuka about this child. Renuka told the lady that he was the son of her maternal aunt. On the next day evening when both the accused, Kiran, Anjanabai, Pankaj & other children were in the house, Renuka and Seema picked up Pankaj and by holding his hands dashed him against the wall in the house itself. Pankaj was dashed against the wall for 20 to 25 times. He cried till he lost his life. He was then placed on the ground and Renuka took the clothes on his person. Renuka told Kiran to pack the dead body in a gunny bag. Kiran tied that gunny bag with the piece of cloth. Renuka put the gunny bag in a suit case. At about 11.00 P.M. Kiran and the accused left the house with the dead body of Pankaj. Then by a rikshaw these 3 came to the area of Karve nagar. The dead body of Pankaj tied in the gunny bag was then thrown near the compound of a temple and then accused alongwith Kiran returned to the house in Shivshahi apartments alongwith the empty suit case. While dropping of the dead body, a handkerchief belonging to Seema fell alongwith the gunny bag at the place where the gunny bag had been

thrown. On 11.9.1996 at about 11.30 a.m. (PW 8) Fransis Aadghav who was the API attached to Kothrud police station was informed by one Shivnand on the telephone that something was lying near the telephone pole in the area of home colony wrapped in a cement gunny bag. (PW 8) sent PHC Zunzarde on the spot. This police officer informed the API that the bag contained the dead body of a child aged 3 to 4 years. The gunny bag was found lying near the compound of Maharshi Karve Shikshan Sanstha. The gunny bag was opened in the presence of 2 panchas and it was found to contain the dead body of a male child aged 3 to 4 years. There were injuries on the body of the child. One ladies handkerchief was attached near the gunny bag and all these articles were seized under a panchanama. The body of the child was carried to Sasoon hospital and in the presence of panchas, an inquest panchanama was prepared. The dead body was then handed over for post mortem. PHC Zunzarde then filed a complaint and an offence under Section 302 r/w 201 of IPC came to be registered vide C.R.No.206/96 at Kothrud police station. A photographer was called and 8 photographs of the dead child were taken which can be found at (Exh.74 to 74-8). The shirt and half pant of the child of the dead body were taken into custody (Articles 47 & 48). The articles found on the spot and the thread around the dead body were also attached. (Articles 34 to 36 & 39

respectively). The post mortem of Pankaj was conducted by (PW 138) Dr.Milind Kamble. As many as 42 wounds were found on the body of this child which included contusions, multiple abrasions, lascerations and incised wounds. Hematoma and haemorrhage was found in the parietal region. The doctor opined that the death was due to asphyxia as a result of smothering associated with other injuries. Much later when Seema was in custody, having been arrested in the case pertaining to kidnapping and murder of Kranti, she volunteered a statement to the police on 27.10.1996. This statement was given within a short period of her arrest on 22.10.1996. In pursuance of the memorandum drawn, the police and the panchas were led to the flat at Shiv-Shahi apartments. The police and the panchas reached this flat at 1.30 A.M. on 28.10.1996. They found Anjanabai residing in the flat. The police searched the flat and from the loft, they found a big sized bag with 2 chains. There were handles and 2 wheels at the bottom of this bag. Blood was seen at the bottom of this bag. Seema also showed the place where Pankaj had been dashed against the wall. Some clothes of Pankaj were seized. Suffice it to say that these articles were sent to the Chemical Analyser and in the bag as well as in the scraping of the plastering, human blood of group-B came to be found by the Chemical Analyser. This human blood group tallied with the

blood group-B found on the clothes of deceased Pankaj.

(l) After the arrest of the accused on 22.6.1996 in C.R.No.303/96 pertaining to the kidnapping of Kranti, through custodial interrogation the police started learning about the other incidents of murder of the children. On 4.11.1996 (PW 156) Shashikant Bodhe who was attached to CID Crime, was appointed to take over the investigation in C.R.No.112/91 and C.R.No.102/96 registered at Shahupuri police station. While pursuing this investigation, he called for the record from other police stations from Maharashtra and found other C.R.s where similar modus operendi was evident. He recorded several statements and on 13.12.1996 he obtained an order from the Chief Judicial Magistrate, Kolhapur directing the Special Judicial Magistrate (PW 143) Vasant Sapre to record a confession of Kiran. Accordingly, confession of Kiran came to be recorded by the aforesaid Special Judicial Magistrate from 14.12.1996 onwards. From the information received from other police stations, the Chief Investigating officer also short-listed the other C.R's which also contained similar modus operendi. The investigating officer also got conducted several test identification parades, in which different witnesses identified the photographs of the dead bodies, the clothes on the bodies as well as the present

accused. On 4.1.1997 the DIG CID appointed (PW 156) Bhode as the Chief Investigating Officer in the case and all the Investigating officers who were handling individual C.R. numbers handed their reports to (PW 156) Bhode. The chief investigating officer then scrutinised all the documents and prepared a single charge-sheet against the accused Anjanabai, Renuka, Seema and Kiran. This charge-sheet was in respect of 9 C.R.s which were mentioned at the end of the charge-sheet. However, the Chief Judicial Magistrate of Kolhapur did not accept the charge-sheet as some of the offences had been committed out of his jurisdiction. The investigating officer then filed a Writ petition in the High Court on 27.1.1997 with a prayer that he should be allowed to submit a single charge-sheet. In the meanwhile, since the 90 days period was getting over, the chief investigating officer filed a charge-sheet before the JMFC, Nasik and another charge-sheet before the JMFC Kolhapur (which resulted in there being 2 separate session cases). Criminal Writ Petition No.114/97 was ultimately decided on 19.1.1997 and by the said Judgment & Order this court allowed the filing of a single charge-sheet in respect of the 9 C.R.s mentioned at the end of the charge-sheet. Thereafter a single charge-sheet in all the 9 C.R.s came to be filed by the Chief investigating officer on 31.1.1997. In due course, the matter was committed to the court of

sessions and the 2 session cases which arose as aforesaid were tried and disposed of by leading common evidence in Sessions Case No.56/97.

(m) Pending the trial on 17.7.1997, (PW 1) Kiran Shinde made an application for grant of pardon and on being treated as an approver. This was conditionally agreed to by the prosecution and on 17.10.1997, the trial court granted pardon to (PW 1) Kiran and permitted him to term approver subject to the condition that he would speak the truth. Before the commencement of the trial, accused Anjanabai expired in custody in December-1997. The present accused were therefore, re-arraigned as accused nos.1 & 2.

(n) At the trial, the prosecution examined as many as 156 witnesses and produced several documents by way of documentary evidence. After the prosecution evidence was led, 313 statements of the accused were recorded. The defence of both the accused was of total denial simplicitor though the accused sought to file a written statement and did file a written statement. A perusal of the same, indicates that the same is a cryptic written statement consisting a few lines denying the prosecution case and making no positive assertions. Ultimately, by the impugned Judgment and order dated 28.6.2001, the Additional sessions Judge, Kolhapur, convicted and sentenced

the accused as stated here-in-above.

3. On behalf of defence, the principal submissions made could be summarised as under :-

(a) that the evidence of (PW 1) Kiran Shinde should be dis-believed as it was un-reliable and was not corroborated in material particulars. That Kiran had shown a tendency to give versions in which he had no role to play in the kidnapping or killing of any child. He had distanced himself from any actual kidnapping or killing. That this was intrinsically un-believable, when Kiran admitted to being present at the scene where many of the kidnappings and killing of all children took place. That in any case after Anjanabai expired pending the trial, Kiran had shown a tendency to ascribe the role originally attributed to Anjanabai in his confession, to the present accused in his substantial evidence. He had improved upon the version given in his confession to attribute additional overt acts to the present accused which did not find place in his confession and in so far as the actual manner and mode of the killing of children was concerned, there was no material corroboration to the evidence of Kiran. In order to indicate the several instances in which Kiran resiled from his confession and attributed the acts said to have been committed by Anjanabai in the

confession to the present accused in his substantive evidence, as also to improve the version given by him in the confession by attributing additional overt acts to the present accused, several examples were given. As we intend to refer to and analyse all these instances here-in-after, they are not been separately referred to at this stage.

(b) That if the evidence of (PW 1) Kiran was dis-believed then the remaining evidence was circumstantial in nature. The links relating to each of these circumstances were not sufficiently established and did not form a complete chain required to secure a conviction with the aid of circumstantial evidence and left such wide gaps that reasonable doubts could be said to have been created regarding the culpability and involvement of the accused in these crimes. That the insufficiency of circumstantial evidence was of such a nature that the circumstances could be explained through other possible hypothesis and therefore, it would be improper to convict the accused for the offences charged. Consequently the accused were liable to be acquitted of all charges.

(c) That in any case if the accused were convicted, this was not a fit case for imposition of the death penalty because of the existence of the several mitigating factors. According to him, amongst the

several mitigating factors, was the fact that the accused were very young when the crimes were committed, they were women, they were illiterate, abandoned by their father at a young age, brought up by a mother who herself was a thief and had neither taught them or inculcated better values. That in the case of a child named Naresh, accused no.1 Renuka had shown some degree of affection, even attempting to secure custody of the child through the court. That if the conviction was with the aid of Section 34, the actual overt acts committed by these accused could not be specified and therefore, it could not be said that the acts committed by these accused were cruel in nature.

4. On behalf of the State, the counter submissions in relation to the submissions made by defence could be stated as under :-

(a) that the evidence of Kiran (PW 1) was acceptable and had rightly been relied upon by the trial court. The contradictions made by Kiran in his evidence were not major in nature and could not be said to be material contradictions. His evidence contained a wealth of details which would not have been given by any person except a person who had actually seen or heard the incidents as narrated. That in any case, it was not necessary that every part of the evidence of the approver should be materially corroborated.

A general corroboration in material particulars was sufficient and such corroboration had been obtained by the prosecution, both in the form of oral evidence as well as documentary evidence.

(b) That in any case in respect of each of the incidents, there was reliable independent evidence to prove several individual circumstances, which by themselves, even without the aid of evidence of Kiran (PW 1) were sufficient to bring home the conviction to the accused. These circumstances in each case of kidnapping and murder formed several links. Such links formed by such different circumstances, were sufficient to form a complete chain to bring home the guilt of the accused and that such circumstances, if cumulitively taken, were of such a nature that they could not be explained by any other hypothesis except the involvement and guilt of the accused.

(c) That if the accused were found guilty, this was a fit and proper case for the confirmation of the death penalty already imposed as there were several aggravating circumstances which would call for the imposition of the extreme penalty. Amongst the aggravating factors was the fact that the kidnappings & murders of the children were for petty gains without any thought of the consequences and anguish that such kidnappings of small children

would cause the parents and the families of such children. That the victims were innocent, some of whom could not even speak. That the injuries sufferred by the children indicated the extremely cruel and ruthless manner in which each of the child had been killed. That the killings were deliberate and pre-planned. That the killings had been made over a period of 6 years which indicated that there was no hope of any reformation on the part of the accused. It was submitted that the aggravating factors in this particular case far outweighed the mitigating circumstances.

5. Both the sides have pointed out numerous authorities dealing with the manner in which the evidence of an accomplice/approver has to be dealt with. The relevant provisions of the Evidence Act i.e. Section 133 and Section 114 (b) have been the subject matter of numerous Judgments which have settled the law relating to this point. It may not be necessary to reproduce at length the law relating to this subject since the same is already well settled and known. Some of the important propositions of law laid down by the Apex court in this regard can be briefly stated as under :-

(a) The evidence of an approver does not differ from the evidence of any other witness except that his evidence would be looked upon with great suspicion.

(See : **S.C.Bahari V/s. State of Bihar** : AIR 1994 SC 2420) approved in (**Jasbir Singh V/s. Vipin Kumar Jaggi & others,** AIR 2001 (8) SCC 289).

(b) No distinction is made under Section 133 of the Evidence Act between an accomplice who is or is not an approver and the evidence of both are to be treated alike (See : **Narayan Chaudhary & Ors. V/s. State of Maharashtra** 2000 (8) SCC 457).

(c) That the approver's evidence must pass the double test of reliability and corroboration in material particulars. (See : **Niranjan Singh V. State of Punjab** 1996 (9) SCC 98).

(d) That before the court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is whether even as an accomplice the approver is a reliable witness. If the answer to this question is against the approver then there is an end of the matter and no question as to whether his evidence is corroborated or not is required to be considered. (See : **Saravanabhavan V/s. State of Madras** AIR 1966 SC 1278).

(e) As regards the extent of corroboration to the evidence of an accomplice is concerned, 4 rules must be born in mind :-

(i) Firstly, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice should itself be sufficient for conviction. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act on it.

(ii) Secondly, the independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime.

(iii) Thirdly, the corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another.

(iv) The corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. (See :

Rameshwar Kalyan Singh V/s. The State of Rajasthan AIR 1952 SC 54).

(f) The antecedents of an approver do not make him either better or worse. The evidence can only be accepted on its own merits and with sufficient corroboration. (See : **Saravanabhavan V/s. State of Madras** AIR 1966 SC 1278).

(g) That delay on the part of the accomplice in applying to be made an approver may be one of the circumstances to be kept in mind as a measure of caution while appreciating his evidence. (See : **Narayan Chaudhary & Others V/s. State of Maharashtra** 2000 (8) SCC 457).

6. Coming to the factual position in the present case, the infirmities and suspicious circumstances in the evidence of approver Kiran referred to by the defence and as also noticed from the record by us, can be briefly stated as under :-

(a) That in his entire evidence, Kiran has shown a tendency to make it look as if he was just a passive by-stander to most of the acts of kidnapping and killing of the various children. In his cross-examination, this witness has stated that he had not killed any of the 9 children. He had not pressed the neck of any child. He had not caught

the hands or legs of any child during the course of putting the end to the life of the child. No child was dropped by him on the ground. Infact the only act to which this witness claims to be a party in a few cases, is the act of disposing off the dead body of the child.

(b) In the incident leading to the hatching of a conspiracy, the entire visit to Chatursinghi in April-1990, the attempt of Renuka to snatch a purse, her being caught, her raising a hue & cry and managing to secure her release because of the child being with her, is a complete and proved omission in the confessional statement of Kiran (PW 1). In his substantial evidence, Kiran talks about this incident for the first time and holds out that he was an eye witness to this entire incident. This omission gains importance because it is said to be the basis of the forming of a conspiracy in June-1990 between Kiran, Renuka and Seema while they had a sitting in the house of one Saste in Pune.

(c) When deposing about the incident relating to Santosh, the version given by Kiran is that Renuka told Kiran that Santosh was crying because of his sustaining an injury due to being dropped by Anjanabai and that the child was not useful to them. Seema also told that while committing thefts, Santosh was crying and therefore, attracting persons

towards her. Seema further told Anjanabai that because of Santosh, there was a possibility of arrest and it was better to put an end to his life. These statements were proved omissions in the confessional statement of Kiran. They become material because they pertained to the present accused instigating Anjanabai to kill Santosh.

(d) When deposing about the incidents concerning Bunti, Swati, Guddu and Meena, the approver Kiran in his substantive evidence stated that when they were proceeding in the vehicle towards Khopoli, the vehicle had stopped at Khandala ghat at about 11 to 11.30 P.M. Kiran got down from the vehicle, Guddu was with Seema and Bunti was with Renuka in the vehicle. These children were sitting near Anjanabai. Bunti and Guddu were asleep. On this occasion, Renuka pressed the neck of Bunti and killed him. Seema also pressed the neck of Guddu and killed him. In this version the statements pertaining to the killing of Bunti by Renuka and the killing of Guddu by Seema are proved omissions in the confessional statement of Kiran. These proved contradictions have been marked in evidence and have been exhibited as (Exh.670). A glance at this exhibited portion indicates that in his confessionery statement Kiran had stated that while they were travelling to Khandala ghat, Anjanabai pressed the neck of Bunti & Guddu and killed them in

the vehicle. These contradictions were found to be material even by the trial court and as a consequence, the trial court acquitted the accused of the charges under Section 302 & 201 r/w. 34 and 120-B of IPC in respect of the killing of Bunti & Guddu.

(e) When deposing about the incident relating to the child Pinky @ Anjali, Kiran stated in his substantial evidence that one day when Pinky was crying, Anjanabai said that this crying child was of no use and pushed Pinky down the staircase of the house. Kiran, Anjanabai and Renuka came down, Anjanabai pressed the mouth of Pinky and when she started to shake her hands and legs, they were caught hold of by Renuka. Seema was also witnessing this incident. Seema came at the spot and separated Anjanabai. Seema also pressed the mouth and nose of Pinky. In this version, the statement that Seema also pressed the mouth and neck of the Pinky is a proved omission in the confessional statement of Kiran before the Special Judicial Magistrate. This omission is material because it seeks to attribute a specific overt act to Seema in the killing of the child.

(f) While deposing about the incident relating to Raja @ Swapnil, in his substantive evidence, Kiran stated that once Seema was moving in the house with

the child Raja who was crying. She dropped Raja on the flooring of the house itself and Raja died instantly. That he, Renuka and Seema then dropped the dead body of Raja in the Khandala ghat. This version of Kiran is a proved omission in his confessional statement recorded by the Special Judicial Magistrate. It is obviously material because for the first time, the witness attributed the overt act of killing Raja to Seema and further attributed the role of disposing of the dead body of the child to Renuka and Seema.

(g) While deposing about the incident concerning Shradha @ Bhagayashree, in his substantive evidence, Kiran stated that the 2 accused told him to kill Shradha. This is a proved omission in Kiran's confessional statement in so far as accused Seema is concerned, as the instigation on her part to kill Shradha does not appear in the said confessional statement.

(h) In relation to the incidents relating to Gauri @ Bhavana, Kiran stated in his substantial evidence that Seema told Anjanabai to kill Gauri, whereupon Anjanabai pressed the neck of Gauri and killed her. That later Renuka removed the clothes from the dead body of Gauri. These 2 statements are proved omissions from the confessional statement of this witness before the Special Judicial Magistrate in so

far as he has admitted in his cross-examination that he did not make any such statements. These omissions are material as they relate to overt acts by the accused.

(i) When deposing about the incidents pertaining to the child Pankaj, Kiran has stated in his substantial evidence that Anjanabai and Seema told him that it was better to end the life of Pankaj, that Renuka and Seema dashed Pankaj against the wall 20 to 25 times. These statements are proved omissions in the confessional statement of this witness before the Special Judicial Magistrate and are material as they relate to overt acts by the accused.

7. We have carefully considered the aforesaid omissions, contradictions and improvements made by the approver Kiran. In our view, it is very difficult for us to believe that this witness though present at every killing, was a passive by-stander who merely looked on while the killing of the children by the ladies was in progress. These circumstances, in our view render the version relating to the killings as given by this witness intrinsically un-natural. The Apex court in the case of Rampal **Rahidass V/s. State of Maharashtra**, **reported in 1994 Cr.L.J. 2320** dealt with a similar situation where an approver Ramchandran claimed to

be a spectator of every fact and every moment, but asserted that he did not participate in any assault at any stage and remaining standing at a distance, taking care of clothes of some of the co-accused. The observation of the Apex court while appreciating the evidence of this approver was as follows :-

. **" From all the attendant circumstances, we are satisfied that the approver Ramchandran is not a reliable witness. His arrest was intrinsically unnatural and his self-confessed participation in the crime without taking any active part in it, not acceptable. The approver has claimed to be a spectator of every fact and of every moment but asserted that he did not participate in the assault at any stage and remained standing at a distance taking care of the clothes of some of the co-accused. His statement is almost of an exculpatory nature. His statement as a whole does not inspire confidence. His story is not worthy of credence. We find ourselves unable to place any reliance on his untrustworthy and unreliable evidence and in that view of the matter we refrain even from expressing any opinion about the effect of the alleged non compliance with the provisions of Section 306(4) of IPC r/w Section 307 of IPC."**

. Apart from the aforesaid fact, we find that there are material improvements in Kiran’s version

relating to the manner and mode of killing every child. If the improvements were in relation to one child, the matter would have been understandable, but virtually on the killing of every child, there is a difference in version. In some cases overt acts attributed to Anjanabai in Kiran's confessional statement, now after her death pending the trial, were attributed in the substantial evidence to the present accused. This could only have been done with the aim of aiding the prosecution in its case against the present accused. In the circumstances, we find that all these omissions, contradictions and improvements relating to the actual mode and manner of killing appear to be motivated to aid the prosecution and in the circumstances we do not find it safe to rely upon the evidence of the approver (PW 1) Kiran Shinde in so far as the same relates the actual manner and mode of killing of the children. However, though we would not rely upon the evidence of this witness on the actual manner and mode of the killing of the children we can place reliance on the evidence of this witness only to corroborate the other circumstantial evidence relating to the offences if found independently proved and reliable. With this observation, we now move on to consider the circumstantial evidence in relation to each of the individual incidents.

7. As regards the hatching of the conspiracy,

though the evidence of Kiran relating to an earlier incident witnessed by him at Chatursinghi is not corroborated either by his confessional statement or by any other evidence, his version relating to a meeting in the house of Saste in June-1990 between the accused and himself, during which Renuka referred to the incident of being caught while carrying Ashish and their agreement to kidnap small children for the purposes of used in thefts, finds corroboration in the confessional statement of Kiran. Independent corroboration of this agreement between the accused and Kiran is obtained from the fact that as many as 13 children were actually kidnapped. However, the further version of Kiran that in the said meeting held in June-1990, it was also decided that if the kidnapped children caused any trouble in the course of the work of carrying out thefts or if there was a possibility of their being involved by such kidnapped children, then the children should be killed, finds no corroboration in the confessional statement or else-where. It cannot be lost sight of that the immediate reason given by the prosecution for the killing of various children were that the children had become ill or were crying. In the evidence of Kiran the immediate reason for killing appears to be some irritation caused by the child at the spur of the moment. We therefore, hold that there is sufficient evidence to indicate that the accused alongwith others were

involved in a conspiracy in or about June-1990 to kidnap young children in order to use them in their work of committing petty thefts. Nodoubt, it would have been desirable if the prosecution had examined witnesses who could depose about the actual use of such children in petty thefts. The prosecution in order to prove the antecedents of Anjanabai and the 2 accused had vide Exhibits 520, 521 & 522 brought on record, the several criminal complaints of thefts registered against these 3 ladies. Amongst the cases which were referred to were several crimes relating to thefts during the period 1990 to 1996. The victims in these cases could have possibly thrown some light about the use of small children while thefts involving them were committed. However, though this evidence has not been led, other proved circumstances such as the accused moving around with these small children in different towns like Kolhapur, Thane, Mumbai, Surat, Baroda and Ahmedabad, in which towns they had no permanent residence, the identification of these children with the family of the accused by completely independent and un-interested witnesses and a complete lack of explanation on the part of the accused as to why these children were with them or were being carried, in our view, is sufficient to lead to the conclusion that the children were infact, kidnapped in pursuance of the conspiracy to use them in the work of committing petty thefts. There is also evidence

to indicate that un-accounted monies were found in the bank accounts of the accused and children of Renuka. Similarly, un-accounted gold ornaments were seized when the child Mina was rescued from the residence of the accused in Mathwad chawl on 6.7.1993. These facts together with the fact that several crimes were registered in different police stations against the present accused and Anjanabai for thefts during the period 1990-1996, and the lack of any explanation coming forth by the accused to explain the source of income relating to the large amount of cash and the numerous gold ornaments, are corroborative of the fact that the accused and Anjanabai were infact petty thieves who later, alongwith Kiran, entered into a conspiracy for kidnapping small children for use while committing such petty thefts. In our view, the evidence of Kiran (PW 1) on the point of conspiracy to the extent that it finds corroboration as stated here-in-above is sufficient to convict the accused for an offence under Section 120-B of IPC in so far as the conspiracy related to the offence of kidnapping small children for use while committing petty thefts.

9. **As regards the incident relating to Santosh,** the circumstantial and corroborative evidence against the accused is as under :-

(i) Last seen together at Pune with Santosh :- .

. It is the case of the prosecution that after Santosh was kidnapped at Kolhapur in July-1990 from a begger, the accused alongwith Anjanabai returned with Santosh to their house at Pune. (PW 67) Vishwas Saste was a Hawaldar serving in the State Reserve Police Force . He was the owner of the house in which, Renuka, Seema, Anjanabai & Kiran were residing as tenants. The said house belonging to this witness was situated at Gondhalinagar in Hadapsar area of Pune. This witness also knew Ashish, the son of Renuka. He states that after about 2 to 3 months of the family of the accused residing in the house, he saw a new boy with them. The said child was aged about 1 & 1/2 years and his name was Santosh. He had asked about this boy to Anjanabai and had been told that the boy was belonging to a relative residing at Kolhapur and since there is nobody to look after this child, they had brought this child with them. This witness was given a bunch of photographs, amongst which was the photograph (Exh.235) of the dead body of Santosh and he identified this photograph as being of the child Santosh who was residing with the accused & family in his house. Nothing of any substance could be elicited in the cross-examination of this witness. It was suggested to him that he had seen the photographs of the accused in the newspapers but the

witness denied this suggestion. The prosecution also examined another neighbour (PW 68) Anuradha Kshirsagar. The accused, Anjanabai & Kiran had resided as her neighbours for 1 & 1/2 years. This witness states that after about 2 months of residing as her neighbours in the house of Saste, one more child was seen with these ladies. This child was aged about 1 & 1/2 years and his name was Santosh. She enquired about this child with Anjanabai. Anjanabai told her that he was son of their relative, his mother was dead and therefore, they had brought the boy alongwith them. This witness also identified the photograph of the dead body of Santosh (Exh.235) in the court. Infact in the course of investigation, on 7.1.1997 an identification parade in respect of the photographs of Santosh had been held by (PW 127) Aniruddha Sasane. This witness had identified the photograph of Santosh even in that identification parade. There is absolutely nothing of substance which was elicited in the cross-examination of this witness. It was not suggested to her that she was not the neighbour residing in the neighbourhood of the family of the accused for 1 to 1 & 1/2 years. There is no reason what-so-ever to discard the evidence of this witness. This witness further identified the accused and Kiran in the court as the persons who were residing as her neighbours for 1 to 1 & 1/2 years. It is the prosecution case that after the

kidnapping of Santosh, in July-1990, Renuka and Seema had gone to Shirdi for committing thefts and as they did not return for 5 to 6 days, Anjanabai alongwith Ashish also gone to Shirdi as to see what had happened to them. There they were caught by the Shirdi police and ultimately were sent to jail at Pune. In the Jail at Pune, Renuka, Sima & Anjanabai were in custody alongwith 2 children Ashish & Santosh. (PW 124) Sunanda Nigot was a women constable serving in the female wing at Yerawada jail at PUne. She deposed to have admitted Anjana Mohan Dhale, Ratan Mohan Dhale and Sima Mohan Gavit in the said jail on 11.10.1990. The entry in the jail register to evidence such admission was proved by this witness at Exh.466. She deposed that a boy by name Santosh was admitted with Anjanabai and a boy Ashish was admitted with Ratan. Ratan and child Ashish were released from the jail on 13.2.1991 and Anjanabai was released with the child by name Santosh on 8.3.1991. That 2 months after such release, all the 3 ladies had again been arrested and brought to Yerawada jail but the child by name Santosh was not with Anjanabai. When this witness asked Anjanabai about the absence of Santosh, she told her that the child belonged to her neighbour and had been handed over to the said neighbour. This witness was shown several photographs and she identified a photograph relating to the dead body of Santosh (Exh.235) in the court. She had also

identified a photograph of the dead body in an identification parade held by (Pw 127) Aniruddha Sasne held on 7.1.1997. There is absolutely nothing in the cross-examination of this witness which would throw any doubt on the veracity of her testimony. Yet another witness (PW 125) Sulochana Gaikwad was a lady guard serving in Yeravada Jail Pune. She corroborates the version given by (PW 124) Sunanda Nigot. She deposed that on 10.10.1990 Anjanabai alongwith the child by name Santosh was brought to Yeravada jail. The child was aged about 1 to 1 & 1/2 years. Ratan had also come with Anjanabai. Ratan was the daughter of Anjanabai and she had come alongwith the child by name Ashish aged about 1 to 1 & 1/2 years. She proved the entry in respect of these boys in the children's register maintained at the jail and proved the relevant entry Exh.468 which contained the names of Santosh and Ashish. She further identified the photograph of Santosh from amongst the bundle of photographs shown to her in the court. She deposed that she had also identified the said photograph in an identification parade held by (PW 127) Anirudh Sasane on 7.1.1997. It appears that the evidence of (PW 124) Sunanda Nigot and (PW 125) Sulochana Gaikwad was recorded when the accused were not present in the court and hence, there is no identification of the accused in the court made by these witnesses. The prosecution had further examined (PW 127) Anirudh Sasane who held the

identification parade on 7.1.1997 in which (PW 67) Vishwas Saste, (PW 68) Anirudha Kshirsagar, (PW 124) Sunanda Nigot and (PW 125) Sulochana Gaikwad amongst others identified the photos of the dead body of Santosh as the child which they had seen earlier. The memorandum panchanama in respect of the test identification parade (Exh.434) was proved by this witness. All the aforesaid evidence, which is corroborated by the evidence of Kiran (PW 1), in our view proves the circumstance of the accused being last seen together at Pune after the kidnapping of Santosh and prior to his killing.

ii. Last seen together at Kolhapur with Santosh on the date of the killing of Santosh i.e. 14.4.1991 :-

. The dead body of Santosh was discovered on 15.4.1991. It was the prosecution case that on the earlier day, Kiran, Ashish, Kishor, Santosh, Anjanabai and the accused had come to Kolhapur for committing thefts. They halted at Mahalaxmi Dharmashala where they reached at about 8.00 P.M. and took a room in the name of Seema. That after keeping their articles in the room they proceeded towards Mahalaxmi Temple for committing thefts. Later, in the evening at the instigation of the accused, Anjanabai pressed the mouth of Santosh and

dashed his head repeatedly on an iron bar at the S.T.stand at Kolhapur. Later on, Kiran searched out a lonely place for disposing the dead body of Santosh and accordingly, the dead body of Santosh was disposed of by Kiran, Anjanabai and Renuka after which they returned back to Mahalaxmi Dharmashala where they continued to stay for 4 more days. In order to prove this circumstance, the prosecution has examined (PW 63) Yeshwant Mandlik, who was the manager at Mahalaxmi Dharmashala. This witness deposed that he was sitting at the counter of the Dharmashala when he was approached by Seema. He was told that she alongwith her family had come for darshan of the Devi and were in need of one room. Seema was identified by this witness in the court. He deposed that Seema was accompanied by 2 other ladies, one gent and 3 children. He identified Renuka as one of the ladies who had accompanied Seema. He also identified Kiran as the male person who had accompanied them. He had allotted room no.20 to these persons. There was a dis-agreement regarding the size of the room and a quarrel took place between this witness and family of the accused. A small child was with the family. Another incident took place between the family of the accused and the staff of the Dharmashala. Kiran had a quarrel with one of the Peons by name Uttam Patil and slapped the said Peon. The manager Yashwant Mandlik had to go and threaten Kiran that

if he did not behave properly, the police would have to be called. Anjanabai then dropped the small child which she was carrying at his feet. The small child then started to raise a hue & cry. The witness felt sorry. The Peon picked up the child and the matter was settled. He stated that the child which was thrown down was about 1 & 1 & 1/2 years of age. He identified the photographs of the dead body of Santosh (Exh.235) as the photo of the child that Anjanabai had then been carrying. Apart from identifying the accused in the court, this witness had also identified the accused in a test identification parade which was held on 14.12.1996 by an Executive Magistrate (PW 137) Bhimrao Patil. This witness proved the entry made in his hand writing in the Pravasi register of Mahalaxmi Dharmashala which was seized in the investigation under a panchanama duly proved by (PW 64) Baliram Phepade. He also proved the signature of Seema at the end of such entry. The said entry was exhibited at (Exh.244). The fact that the said register was signed by Seema was independently got proved by the prosecution through the evidence of a hand-writing expert (PW 65) Dilip Amaral. Under a panchanama dated 12.12.1996, 36 signatures of Seema were taken by the police on a blank sheet. These specimen signatures were then sent alongwith entry (Exh.244) to the hand writing expert (PW 155) Dipak Wagale. He furnished his opinion on 19.3.1997 (Exh.609)

opining that the signature on the register of Mahalaxmi Dharmashala, Kolhapur matched the specimen signature of Seema. Nothing of any substance could be elicited in the cross-examination of this witness. The prosecution also examined (PW 56) Uttam Patil who was the Peon serving in Mahalaxmi Dharmashala. He had an encounter with the family of the accused in the Dharmashala while they were staying there. Infact, he had a fight with Kiran over the supply of 2 additional matresses and was slapped by Kiran. He identified Kiran and the accused in the court. He deposed about a child being carried by Anjanabai which was about 1 & 1 & 1/2 years old and from the bunch of photographs shown to him, he identified the child in the photograph of the dead body of Santosh as being the child who was with the family on the evening of 14.1.1991. He had also identified the accused in an identification parade held by the Executive Magistrate (PW 137) Bhimrao Patil on 14.12.1996. It may be stated here that the prosecution has also proved the identification of the accused at a test identification parade by (PW 63) Yashwant Mandlik and (PW 66) Uttam Patil by examining the Executive Magistrate (PW 137) Bhimrao Patil. He speaks about the identification parade which he had held on 14.12.1996 and in which (Pw 63) Yashwant Mandlik and (PW 66) Uttam Patil alongwith some others identified the accused. The Advocate for the defence raised a

strong objection to the value that could be attached to such an identification parade by pointing out that the 2 accused were mixed alongwith 8 dummys. He pointed out that under the criminal manual if 2 accused have to be identified in an identification parade, then the number of dummys ought to have been 10 to 12. No doubt, it would have been desirable to have more number of dummys and the mixing of the accused in 8 dummys may reduce the weightage and strength of this evidence but it cannot be forgotten that the evidence of identification parade is in the nature of corroborative evidence to the substantive evidence which is the identification in the court. While dealing with the object and purpose of holding an identification parade, the Apex court in the case of **State of Maharashtra V/s. Suresh** reported in 2000(1) SCC 471 had observed as under :-

> "Identification parades are not primarily meant for the court. They are meant for investigation purposes. The object of conducting a test identification parade is twofold. First is to enable the witness to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the

> witnesses had seen in connection with the said occurrence. So the officer conducting the test identification parade should ensure that the said object of the parade is achieved. If he permits dilution of the modality to be followed in a parade, he should see to it that such relaxation would not impair the purpose for which the parade is held."

. Again in the case of State of M.P. V/s. Lekh Raj, the Apex court held as under :-

> "Though the holding of identification proceedings are not substantive evidence, yet they are used for corroboration purposes for believing that the person brought before the court was the real person involved in the commission of the crime."

. The witnesses (PW 63) Yashwant Mandlik and (PW 66) Uttam Patil had in their substantial evidence in court identified both the accused. Their evidence further indicates that in view of the quarrel between the family of the accused and these witnesses, they had good reason to remember the faces of these accused. This circumstance also finds corroboration in the evidence of (PW 1) Kiran.

In our view, there is sufficient evidence to prove the circumstance of the accused last being seen together with Santosh on 14.4.1991, which was the date on which Santosh is said to have been killed.

iii. The absence of Santosh in the rikshaw by which Renuka, Anjanabai and Kiran returned to S.T.stand Kolhapur to pick up Seema and the 2 children of Renuka :-

. This vital circumstance is proved by the prosecution through the evidence of (PW 69) Shivaji Jadhav. This witness is the owner of an autorikshaw. He stated that about 7 to 8 years ago, at about 11.45 to 12 mid night, he left one passenger by his rikshaw near the Pune-Banglore road. He was returning with an empty rikshaw towards the Kolhapur S.T.stand when 3 persons i.e. 2 ladies and one strong and stout person stopped his rikshaw. These 3 persons told him to carry them towards the S.T.stand. One lady was aged about 45 years and another was aged about 25 to 30 years. He brought them to Kolhapur S.T.stand. The strong person got down the rikshaw. One lady aged about 25 years with two children came near the rikshaw. She also sat in the rikshaw with these 2 children. This witness protested saying that he could not carry more than 4 passengers and asked for an additional payment of Rs.60/-. The rikshaw was then taken at

the request of these persons towards Mahalaxmi Dharmashala. At the Dharmashala when the rikshaw driver asked for extra money for one additional seat, the strong person abused him and started a quarrel. The elder lady sitting in the rikshaw then paid him Rs.60/- and the witness left the spot with his rikshaw. He stated that the elder lady was not in the court. The strong person who had stopped the rikshaw was identified by him in the court as Kiran. He identified the lady who had boarded his rikshaw with Kiran as Renuka and lastly identified the lady who had boarded his rikshaw at Kolhapur S.T.stand as Seema. This witness had also identified both the accused in an identification parade held on 14.12.1996 by (PW 137) Executive Magistrate Bhimrao Patil. As regards this identification parade, an objection was raised by the Advocate for the defence that the accused were mixed only with 8 dummys but this objection has been dealt with by us here-in-above. The identification parade being only corroborative evidence and there being reliable substantial evidence of identification in court alongwith good reason of this witness to recognise the accused due to a quarrel which took place in his autorikshaw, the identification evidence is acceptable. This circumstance also finds corroboration in the evidence of (PW 1) Kiran. We must hold that this circumstance is proved by the prosecution.

iv. Finding of the dead body of the child aged about 1 & 1 & 1/2 years on 15.4.1991 near the S.T.stand at Kolhapur :-

. This circumstance was sought to be proved by the prosecution through the evidence of (PW 53) PSO Ashok Yenechavandikar. He stated in his evidence that on 15.4.1991 one Hemgiri Bankar came to the Shahupuri police station and lodged a report about the finding of the dead body of a child at 6.30 in the morning near the compound wall of his house on the side of a parked rikshaw. This witness registered A.D.No.26/91, made an entry in the station diary (Exh.213-A) and handed over the investigation to (PW 54) ASI Kamble. (PW 54) then proceeded to the spot alongwith 2 panchas and a photographer. He found a dead body of a child and prepared an inquest panchanama. He sent the dead body to the Medical officer for post mortem. The advance certificate mentioned fracture of the skull. He also took a photographer to take photographs of the dead body of the child lying on the spot and the further investigation was handed over by this witness to (PW 58) Piraji Kamble. The prosecution examined (PW 57) Jinnappa Bhosale who was a panch in respect of the inquest panchanama and who proved the inquest panchanama (Exh.226). The prosecution then examined (PW 58) PSI Piraji Kamble who was the next

Investigating officer attached to Shahupuri police station and who registered C.R.No.112/91 under Section 302 r/w. 201 of IPC. He prepared the panchanama relating to the spot of the offence and ultimately as the culprits could not be traced, he submitted an A-final report to the JMFC. Another witness (PW 60) Sadashiv Sutar who was a Police constable who had been to the spot alongwith ASI Kamble was also examined to prove the finding of the dead body of a child. The photographer (PW 61) Bhausaheb Patil who had accompanied (PW 54) Khirappa Kamble was examined to prove the photograph of the dead body of Santosh (Exh.235) and the negative being at Exh.235-A. This witness also proved his own photo call register (Exh.236). Finally, the prosecution examined (PW 64) Baliram Phepade who also proved another panchanama relating to the attachment of the photographs taken by (PW 61) Bhausaheb Patil and his photo register in the present crime. It may be stated here that there is hardly any challenge to all this voluminous evidence produced by the prosecution. The circumstance of finding of the dead body immediately on 14.4.1991 must be held to be comprehensively proved by the prosecution.

v. <u>The finding of injuries on the dead body of the child found on 15.4.1991</u> :-

. The dead body of Santosh was sent for post mortem to (PW 132) Dr.Chandrashekhar Chandokar. The evidence of this witness indicates that he found 4 external injuries, of which 3 were antemortem. They were in the nature of abrasions on the vertex, below left eye and left side of neck. On internal examination he found haematoma 2 cm X 2 cm in the muscle over frontal region, fracture of the base of the skull (right side) of length 2 cm. Intra cerebral haemorrhage on the right side. He drew the post mortem notes (Exh.495) and opined that the cause of death of the boy was shock due to fracture of the base of his skull with intra cerebral haemorrhage. He opined that if the skull is dashed forcibly against a hard object more than 2 to 3 times, there was a possibility of sustaining the injuries as found by him. This circumstance is thus proved.

vi. Lack of any explanation about the presence of Santosh with them by the accused :-

. In their 313 statements the accused have not given any explanation what-so-ever about the presence of Santosh with them as proved through the circumstantial evidence referred to here-in-above. This non giving of explanation by itself can now form a circumstance in favour of the prosecution.

vii. Evidence of Kiran in the light of above :-

. Though we have chosen not to place reliance on the evidence of Kiran as regards the actual killing of Santosh, yet we feel that his evidence relating to kidnapping of Santosh can be believed in view of the corroborating circumstances which indicate the presence of Kiran alongwith accused and a complete lack of explanation by the accused about such presence of Santosh with them. The evidence of Kiran pertaining to kidnapping was that Santosh was kidnapped by the accused and Anjanabai from Kolhapur and that his name was kept by Renuka as Santosh. Renuka told him about the manner of kidnapping of this child from Kolhapur. She told him that she saw a female begger at the S.T.stand and brought this lady under a pretext of giving her a job, upto Karad. At Karad she gave a slip to this lady and alongwith Anjanabai & Seema returned to the house of Saste at Pune. Kiran (PW 1) has identified the photograph of the dead body of the child found as that of Santosh. This evidence of Kiran relating to the kidnapping has not been shaken in the cross-examination. It is fully corroborated by his confessional statement and can be therefore, be relied upon as acceptable evidence relating to the kidnapping of Santosh.

viii In the net result, we finds that the

prosecution has proved that these accused were involved in the killing of Santosh. The act was done in pursuance of their common intention. The disposal of the dead body was also an act committed with common intention. The aforesaid circumstances are links which form a complete chain indicating the involvement of the accused both in the kidnapping of Santosh as well as in his killing and attempting to dispose off his dead body. The accused would therefore, be liable to be convicted under Section 302 r/w. 34 of the IPC, under Section 363 & 365 r/w 34 of IPC and under Section 201 r/w. 34 of the Indian Penal Code.

10. **As regards the incident relating to Naresh,** the circumstantial and corroborative evidence against the accused is as under :-

(i) Finding of an abandoned child in the area of Ram-kund, Nasik on 28.8.1992.

. The circumstance is brought on record through the evidence of (PW 107) Ratnamala Powar who was a lady police constable attached to Panchavati police station. This witness had been to the area of Ram-kund Nasik at about 7.00 A.M. on 28.8.1992. She found that a mob had gathered on the spot around a boy aged about 1 to 1 & 1/2 years. She made an enquiry about the parents of the child but nobody

could give any information. She took the child to Panchavati police station and the child was sent to Civil hospital, Nasik for examination. At the Civil hospital the child was examined by (PW 91) Dr.Kanchan Desale. She found 2 injuries on the child which were in the nature of abrasions on the left frontal region and an abrasion on the right side of abdomen (ilic fossa) 2 cm X 2 cm. After the medical examination the child was taken back to the police station and (PW 107) Sou.Ratnamala Powar then filed a report to the Police Inspector submitting that the child should be kept in a Adhar-ashram. Accordingly, after obtaining committal order from the court, the child found was admitted to the Adhar-ashram on 2.9.1992. During the trial, Naresh was present in the court and he was identified by (PW 107) Ratnamala Powar on 5.8.1995 as the child who was found by her at the temple in Ram-kund area of Nasik on 28.8.1992. On a question put by the defence, the witness stated that she used to go to Adhar-ashram repeatedly and therefore, she was in a position to identify the child in court. In view of the aforesaid evidence, the circumstance that the child was found at Ram-kund, Nasik by the police and was admitted to Adhar-ashram can be safely accepted.

(ii) Filing of a false application by Renuka in the Civil court to claim custody of Naresh :-

. It appears that one (PW 106) Vishnu Khalage made an application under Section 8(4) of the Guardian & Wards Act r/w. Hindu Adoption and Maintenance Act, on 14.7.1993 in the court of the District Judge at Nasik in order to be appointed as a guardian of Naresh. Vishnu Khalage obtained interim custody of this child through orders of the court. Anjanabai, then made an application representing herself to be Shantabai for obtaining interim custody of the child through an Advocate Jayprakash Kasliwala (PW 96). This application came to be rejected by the court. The aforesaid facts are matters pertaining to the court record but we do not propose to deal with the application made by Shantabai because of her death during the pendency of this case. It is however, the further prosecution case that on 4.7.1996 Renuka again approached (PW 96) Advocate Jayprakash Kasliwala and informed him that Naresh was her twin son. Advocate Jayprakash Kasliwala told her that he had already accepted the Vakalatnama of her mother and therefore not in a position to accept her Vakalatnama. He suggested to her to contact Advocate Shetye. He called Advocate Shetye to his chamber and the two Advocates confirmed the facts. Accordingly, a 2nd intervenor's application on behalf of Renuka was filed on 4.7.1996 by Advocate Shetye. In this application Renuka claimed to be the real mother of Naresh who she claimed to be her twin son. The prosecution proved the application

made by Renuka (Exh.321) through the evidence of (PW 90) Vilas Lonari, who was the Advocate engaged by Vishnu Khalage and who had been served with the copy of the intervention application made by Renuka. That ultimately, vide his order dated 6.10.1997 the IInd Extra Joint District Judge, Nasik granted Civil Misc.Application 214/1993 filed by witness Vishnu Khalage (PW 106). In his Judgment and order, he has referred to the application made by Renuka and her case that she had given birth to twin children of whom one was Naresh and other was Kishor. He dis-believed this case and appointed Vishnu Khalage as the guardian and permitted to him to take Kalpesh @ Naresh in adoption. To prove the offence of forgery committed by Renuka, the prosecution further examined (PW 92) Dr.Sanjay Bidaye. This Doctor had delivered the 3 children of Renuka and he was examined to prove that Renuka did not give birth to twins at any point of time.

. On the analysis of the evidence pertaining to an incident relating to Naresh, it is seen that there is no evidence to corroborate the fact of Naresh having been kidnapped. There is no missing complaint filed in respect of this child Naresh. Nobody has seen Naresh alongwith the accused persons or the family members. Regarding the abandoning of the child, Kiran in his examination-in-chief, gave a version that on 28.8.1992 they had gone to Nasik for

committing thefts. On reaching Nasik, Naresh became sick, therefore, Renuka suggested the release of Naresh and Naresh was thus abandoned near Ram-kund temple at Nasik. He has stated in his cross-examination that on 28.8.1992 they started from Pune S.T.stand at 11.00 A.M. They reached Nasik at 4.30 P.M. and took a rikshaw to go to Ganga ghat. Anjanabai had come with them. They were there at Ganga-ghat till 8.00 P.M. and Naresh was released on the steps of Ram-kund mandir. That in the evening itself, they returned back to Pune by catching a S.T.bus from the main S.T.stand at Nasik. This version is at variance with the evidence of (PW 107) Ratnamala Powar who states that she saw the abandoned child early in the morning on 28.8.1992. This fact does not corroborate the evidence of (PW 1) Kiran even on the question of abandonment. There is one more circumstance which makes us wary of the version relating to abandonment of the child given by (PW 1) Kiran. Alongwith the written statement filed by the accused, certain jail registers were produced. One of the entry in this jail register indicates that Anjanabai Mohan Dhale which is the alias of Anjanabai was infact in Yeravada Jail on 28.8.1992. In the circumstances, we will have to give the benefit of doubt to the accused and acquit them of charges relating to kidnapping, punishable under Sections 363, 364 and 365 read with Section 34 of the Indian Penal Code. Regarding the charge

relating to forgery, it is clear that the forged document was prepared prior to its filing in the court and the forgery would therefore, not attract the bar contained in Section 195 (1)(b) (2) of the Cr.P.C. The contents of the application signed by Renuka and filed through her Advocate to the effect that Naresh was her twin child alongwith Kishor has been proved to be a false statement by the prosecution. This falsity is proved through the evidence of Dr.Sanjay Bidaye (PW 92) who was the Doctor who delivered 3 children of Renuka and gave evidence to indicate that Renuka had never been the mother of twins. In the circumstances, in our view, the conviction of Renuka by the trial court under Sections 468 & 469 of the Panal Code cannot be faulted with and will have to be confirmed. The other accused Seema however, cannot be convicted of these offences as she was not a party to the application made before the Court. As regards the charge under Section 323 read with 120-B and 34 of IPC, in the absence of any clear evidence relating to who had actually caused injuries to Naresh, the benefit of doubt will also be given to the accused and the accused will have to be acquitted of the charges under Section 323 r/w Section 120-B of the Indian Penal Code.

10. **As regards the incidents relating to Bunty, Swati, Guddu and Mina,** the circumstantial and

corroborative evidence against the accused is as under :-

(i) Children seen together with the accused at Labade chawl :-

. It is the case of the prosecution that in the last week of March-1993 the family of the accused left the house of Indubai and came to reside at Labade chawl situated in Shastri Nagar, Kothrud Pune. Just before moving to the said chawl, they purchased a fiat car on 15.1.1993. They started using the said Fiat Car for committing thefts. In April-1993 they had gone to Kalyan in their Fiat car with the aim of kidnapping children and committing theft. They parked their car near the railway station at Kalyan. While Kiran was sitting in the car parked near the Kalyan station, Anjanabai & accused had kidnapped a boy aged 1 & 1/2 years and a girl aged about 2 & 1/2 years . These children were kidnapped at Kalyan railway plat-form. Renuka had named these children as Bunty & Swati. Within 15 to 20 days of kidnapping these children, the family had visited V.T.station at Bombay. Again the accused and Anjanabai had been to the plat-form to kidnap children. They had taken Bunty with them. Kiran remained seated in the car. The accused and Anjanabai had returned after about half an hour alongwith 3 children. One child was aged about 2 to

2 & 1/2 years, another was aged about 9 to 10 years and one girl child was aged about 2 to 3 years. The boy who was aged 9 to 10 years old was able to talk properly and was hence released by the family at S.T.stand Panvel. The remaining 2 children were named by Renuka as Guddu & Meena. These 4 children Bunty, Swati, Guddu & Meena were residing at Labade chawl together. After about 2 & 1/2 months, the child Swati was abandoned by the family in the bazar at Solapur road at Pune. This child was abandoned because Renuka did not like the child. The children Bunty & Guddu were killed in May-1993 by the accused in a vehicle on the way from Pune to Khopoli. The body of Bunty was thrown at Khandala ghat by Anjanabai and the body of Guddu was thrown by her at Shil-phata on the same day. The accused and other family members then returned back to Labade chawl at Pune and immediately shifted their house-hold articles from Labade chawl to the new house at Mathwad chawl. In the aforesaid background, the circumstance of these children being seen together with the accused and other family members at Labade chawl was sought to be proved by the prosecution through the evidence of (PW 101) Hanumant Labade, who was the owner of Labade chawl. He stated in his evidence that he was the owner of 6 rooms in the chawl. That Renuka, Seema, Kiran and Anjanabai were known to him as they had resided in room no.3 in his chawl. They resided in his room as tenants for a

period of 7 to 8 months. He stated that in the beginning, Renuka, Seema, Kiran & Anjanabai came to reside in his room with 2 children whose names were Ashish & Kishor. Anjanabai had told him that these children were the sons of Renuka. After about 2 to 3 months, 2 more children were brought to reside in the room. The names of these children were Bunty & Swati. Bunty was a boy child aged 1 to 1 & 1/2 years and Swati was a girl child aged about 2 to 2 & 1/2 years. After about 15 to 20 days, 2 more children were brought to reside in this room. Their names were Meena & Guddu. Meena was aged about 4 to 4 & 1/2 years. That the child Swati was not seen with the family after about 15 to 20 days. This witness identified the photograph of the dead body of Guddu (Exh.343) from a bunch of photographs in the court. From his evidence it is clear that he had also identified the same photograph (Exh.343) in a test identification parade held by (PW 113) Special Judicial Magistrate Shivaji Powar. Lastly, this witness also identified the 2 accused and Kiran in the court. Nothing of any substance could be elicited by the defence in the cross-examination of this witness. The police also examined (PW 100) Hirabai Kadam who was the neighbour of the family of the accused at Labade chawl. She stated in her evidence that she knew Renuka, Seema, Kiran & Anjanabai. That initially all these 4 persons had come alongwith 2 children. These 2 children were

the sons of Renuka by name Ashish & Kishor. After about 2 to 3 months, 2 more children came to reside with the family, of whom one was a boy and the other was a girl. She enquired with Anjanabai as to who these children were and was told that these children were the son & daughter of her sister. She stated that the names of these 2 children were Bunty & Swati. Bunty was aged about 2 & 1/2 years and Swati was aged about 3 to 4 years. That after about 8 to 15 days the girl by name Swati was not seen with them. She had asked Renuka as to where Swati had gone and had been told that the child had become ill and had been sent back to her mother. That after about 15 to 20 days, 2 more children were brought, of whom one was a girl and one was a boy. She had asked Anjanabai about these children also and was told that they were the sons and daughters of her brother. She was further told that as the wife of her brother was sick, the children were brought by Anjanabai. The name of the boy was Guddu and name of the girl was Meena. Guddu was aged about 1 and 1/2 years. This witness identified the photograph of the dead body of Guddu, (Exh.343) in the court. The witness stated that the said photograph of Guddu Exh.343 had also been identified by her in the test identification parade held by (PW 130) Shivaji Powar on 9.1.1997. Lastly, Hirabai identified the 2 accused and Kiran in the court. There is absolutely nothing in the cross-examination of this witness

which affects the veracity of the aforesaid evidence. In order to prove the identification of the photo of Guddu (Exh.343) at the test identification parade held on 9.1.1997, the prosecution further examined (PW 130) Shivaji Powar. This witness testified about the holding of the test identification parade on 9.1.1997. There is nothing of substance in the cross-examination of this witness. The panch (PW 84) Vasant Sahani who had signed the memorandum panchanama of the test identification parade held on 9.1.1997 was also examined to prove the manner in which the test identification parade was held. His evidence is also not shaken in his cross-examination. The photograph (Exh.343) was attached in the investigation under a panchanama (Exh.356) which has been got proved by the prosecution through (PW 99) Gotiram Patil. This circumstance is also proved by the evidence of the approver (PW 1) Kiran as corroborated by his confessional statement. In our view, the aforesaid evidence establishes the circumstance that the children were seen alongwith the accused, Kiran and Anjanabai at Labade chawl where the family of the accused were residing.

(ii) Finding of the dead body of Guddu on 30.6.1993

. This circumstance has been proved by the prosecution through the evidence of (PW 93) Prakash

Choudhari. This witness states that on 30.6.1993 he had gone to village Mil for doing some plumbing work in a temple. When he was returning, he saw 10 to 12 persons gathered at a spot. The dead body of a child aged about 1 & 1/2 years was found lying there. The enquiries made in the area did not yield any further information and therefore, this witness had gone to the Khopoli police station to report about the finding of the dead body. The information given by him was recorded in the police station (Exh.337). This witness identified the photograph of the dead body (Article-M) seen by him on that day. There is virtually no cross-examination of this witness. This evidence was not seriously challenged by the defence and is corroborated by (PW 94) Maruti Tamane, who was the PSI attached to the Khopoli police station and who went to the spot on receiving the complaint and prepared an inquest panchanama. (PW 95) Yasin Shaikh was the photographer who had been called by PSI Tamane to come and take a photograph of the dead body. He proved the photograph of the dead child found at village Mil and the said article-M was exhibited as Exh.343 while its negative was exhibited as Exhibit-343/A. Finally this circumstance is also proved through the corroborative evidence of (PW 98) i.e. Sr.P.I.Laxman Patil attached to the Khopoli police station who recorded C.R.No.101/93 but since he could not trace any accused in this incident, he

filed a A-summary report to JMFC, Khalapur on 27.11.1993. In our view, the aforesaid circumstance is proved beyond doubt through the aforesaid evidence adduced by the prosecution.

(iii) The finding of injuries on the dead body of child Guddu :-

. At the very out-set, it may be stated here that the prosecution did not examine any Doctor to prove the injuries suffered by the child Guddu. The post mortem notes were also not produced by the prosecution in this case. However, (PW 94) PSI Tamane who was the PSI attached to Khopoli police station had gone to the spot and prepared an inquest panchanama. He states in his evidence that as injuries were found on the dead body, he had sent the dead body for post mortem. The advance death certificate was issued by the Doctor with a mention that the death of the child was caused due to strangulation and axphyxia. After receiving this advance death certificate, this witness had lodged a complaint under Section 302 of IPC, which was registered under C.R.No.101/93. In the cross-examination of this witness, there is no challenge what-so-ever to his version that injuries were found on the dead body. In the inquest panchanama (Exh.340) which is proved through this witness, it is mentioned that on the right chin near

the ear there was an abrasion that the forehead of the child was swollen, there was abrasion on the lips, that the finger on the left hand had been turned inwards and that the right hand was straight. (PW 144) Vithoba Gavali was Dy.S.P. attached to CID Crime, Nasik branch. He also investigated C.R.No.101/93 of Khopoli police station. This witness makes a reference to the FIR, inquest panchanama, spot panchanama and post mortem notes. In our view, not-with-standing the fact that the post mortem notes are not on record, the fact that the child was found dead, coupled with the fact that there is no challenge by the defence to the injuries found, the circumstance as to finding of injuries on the dead body of the child Guddu can be held to be proved.

(iv) The children Bunty, Swati & Guddu not being seen at Mathwad chawl and the finding of Meena at the residence of the accused in this chawl :-

. It was the prosecution case that immediately after the killing of Bunty & Guddu, the accused and family returned back to Labade chawl and on the same day shifted to Mathwad chawl. The absence of these children at the Mathwad chawl has been brought on record by the prosecution through the evidence of (Pw 102) Dattatraya Mathwad who was the owner of the said chawl. This witness has stated that he knew

Renu, Devki, Kiran and Anjanabai. Renuka and Anjanabai had come to him and had hired his room on payment of a deposit on 29.6.1993. The room was taken by them under a written agreement (Exh.364) and on the same day cash amount of Rs.28,000/- was paid to him. That on 6.7.1993 when he came to the room which he had given on hire, he found the door shut and one girl was found crying in the room. This girl was Meena. This witness identified Meena in the court. He also identified the accused and Kiran in the court. (PW 82) Shamrao Shinde also talks about the incident dated 6.7.1993 where one child Meena was found crying in the locked room. (PW 103) Sou.Shakuntala Mathwad is the wife of the owner of the room. In her evidence, she has described the 3 children who were residing with the family of the accused. She has stated that amongst these 3 children, there were 2 boys and one girl. The 2 boys were sons of accused Renuka. She has identified the girl as Meena who was sitting in the court room. She also identified Renuka, Seema and Kiran in the court. Similarly, the evidence of (PW 115) Suresh Bhagwat who was the ASI who rescued Meena also indicates that Meena was the only child found in the house occupied by the family of the accused on 6.7.1993. (PW 104) Nirmala Nimsarkar is the witness who admitted Meena in an institution after her rescue. (PW 136) Dr.Kishor Chabukswar had examined Meena and found 6 injuries on her body

including abrasions and contusions. (PW 153) Pradipkumar Ghode was the Dy.S.P. CID Latur, who investigated the case of Meena, registered at the Kothrud police station and according to him it transpired during the investigation that the girl Meena, had been kidnapped by Anjanabai and her 2 daughters Seema and Renuka at V.T. Railway station. He lodged the complaint on behalf of the State at Kothrud police station on 27.11.1996 and an offence was registered against Anjanabai, Renuka and Seema vide C.R.No.380/96 under Sections 363, 364, 367 & 368 of the Penal Code. All this evidence adduced by the prosecution indicates that Meena was the only child found at Mathwad chawl and this child was rescued by the police and put in an institution. This evidence indicates that the children Bunty, Swati & Guddu were not seen alongwith the accused in Mathwad chawl by anybody. In our view, this evidence establishes the aforesaid circumstance. This circumstance is also proved by the evidence of (PW 1) Kiran as corroborated by his confessional statement.

(iii) Lack of any explanation on the part of the accused to explain the presence of the children Bunty, Swati, Guddu & Meena :-

. In the 313 statement of the accused there is

absolutely no explanation given by the accused as to how and why the children Bunty, Swati, Guddu & Meena were with them. This lack of explanation also militates as a circumstance and forms a link in the circumstantial evidence against the accused.

. In our view, the aforesaid circumstances clearly indicate that the accused would be liable to be convicted of an offence punishable under Section 363 & 365 r/w section 34 of the Indian Penal Code for the kidnapping of Bunty & Swati. They would also be liable to be convicted for the offences under Sections 363 & 365 r/w section 34 in respect of the kidnapping of Guddu & Meena. In respect of the offences concerning the murder of the children Bunty & Guddu and the concealing of the dead body, the trial court has acquitted the accused of these charges on account of material contradictions made by (PW 1) Kiran. It is unfortunate that there is no appeal against the acquittal. In the absence of there being any appeal against acquittal in respect of the charges under Section 302 r/w. 120-B and 34 of IPC and under Section 201 r/w 120-B and 34 of IPC filed by the State, we would have no jurisdiction in an appeal against their conviction or even in confirmation proceedings to convert the acquittal into a conviction in respect of these charges. This is so, on the plain reading of Section 386 (b) of the Code of Criminal Procedure which deals with the

powers of the appellate court in an appeal against conviction as also the reading of Sections 366 and 368 of the Code of Criminal Procedure which deal with the powers of the High Court in a confirmation case. In this regard, in so far as Section 386 is concerned, useful reference may be made to two Judgments of the Apex court which hold that an order of acquittal cannot be reversed into an order of conviction in an appeal against conviction in the absence of any appeal against the order of acquittal. (See : **Thadi Narayana V/s. State of Andhra Pradesh** AIR 1962 SC 240 as also the case of **Lakhan Mahto V/s. State of Bihar,** AIR 1966 SC 1742). In so far as the powers of this court in confirmation proceedings are concerned, the Apex court has held that when a reference is made to the High court under Section 366 of Cr.P.C., for passing a sentence of death, the High court has to satisfy itself as to whether a case beyond reasonable doubt has been made out against the accused for infliction of the extreme penalty. The proceedings in the High court requires reappraisal and reassessment of the entire evidence. In our view, on the plain reading as to what the High court can do under section 368 of the Cr.P.C. even after, reappraisal and reassessment, is to confirm the sentence or pass any other conviction warranted by the court or annul the conviction and convict the accused of any offence, which the Sessions court might have convicted or

order a new trial on the amended charge or acquit the accused persons. There is no power under Section 368 to convert an acquittal by the trial court in respect of any charge into a conviction. Such a reversal of an acquittal can only be done in exercise of powers under Section 378 r/w 386(a) of Cr.P.C. This being the position, we refrain from dealing with the question as to whether the accused could have been convicted for the murder of Bunty & Guddu or for the concealment of the evidence relating to their dead bodies.

11. **As regards the incidents relating to Pinky @ Anjali**, the circumstantial and corroborative evidence against the accused is as under :-

(i) <u>The lodging of a missing complaint regarding this child on 19.10.1994 and the subsequent filing of the FIR relating to the offence of kidnapping</u> :-

. This circumstance is sought to be proved by the prosecution through the evidence of (Pw 10) Sujata Diwan who is the mother of Anjali. This witness stated that on 18.10.1994 she had been to Kalika mandir situated on Agra road at Nasik. She was accompanied by daughters Shweta and Anjali as well as her husband. They reached at temple at about 9.30 P.M. The daughter Shweta was with her and Anjali was with her husband. She went ahead for

conducting pooja and the filling of the Oti of the deity. The articles of pooja were with her husband and to bring them to her, he kept Anjali on the floor. Her husband took pradakshina around the deity and on his return, found that Anjali was not there. Immediately he informed her about the missing of Anjali. They searched for Anjali till about 8.00 a.m. in the morning on the next day. Anjali could not be found. Thereafter witness Sujata became unconscious. On her regaining consciousness, they went to the police station and lodged a missing report (Exh.83). Apart from the production and exhibition of the missing report, this fact has also been corroborated by the prosecution through the evidence of (PW 9) PSI Mahadu Saundane. The father of the child Anjali (PW 62) Hemant Diwan was also examined by the prosecution. He spoke about the manner in which Anjali was lost. On 1.11.1996 he lodged a FIR with Sarkarwada police station mentioning that his daughter has been kidnapped. The same FIR is produced and proved by the prosecution (Exh.239). He identified the photographs of the dead body of Anjali (Exhs.87/1, 87/2, 87/3 & Exhs.90 & 91) as that of his daughter. The lodging of a FIR by this witness has also been proved by (PW 140) Sanjay Sangale attached to the Sarkarwada police station. In our view, the aforesaid evidence clearly proved the aforesaid circumstance of lodging of the missing

report and later on FIR in respect of the kidnapping of Anjali @ Pinky.

(ii) The accused being seen at Parimal lodge Nasik on 18.1.1994 before the kidnapping without Anjali and on the same day after the kidnapping of Anjali with the said child :-

. This circumstance is sought to be proved by the prosecution through the evidence of (Pw 12) Ajit Pahade. This witness is the owner of Parimal lodge at Nasik. He stated that on 11.10.1994 at about 6 p.m., he himself and his mother were at the counter of the lodge. At that time, 3 ladies with 2 to 3 children came there and told him that they had come for Deo-darshan and wanted to stay in the lodge for 8 to 10 days. On the instruction of his mother, this witness allotted room no.6 in the lodge to these ladies. The youngest amongst the ladies wrote her name and address and put her signature on the register of the lodge. The 2nd lady was a little older, aged about 28 to 29 years and the 3rd lady was an elderly aged about 50 years. Three children were with them, one male child aged about 8 to 9 months. 2nd male child aged about 2 to 2 & 1/2 years and the 3rd male child aged about 5 years. The ladies stayed in the lodge for a period of 8 days and left at about 11.00 P.M. on a day which happened to be Kojagiri Poornima. On the day of

Kojagiri Poornima at about 9.00 P.M. this witness and his mother Lilavati were on the ground floor and they heard the noise of a hue & cry coming from room no.6 from the 1st floor. When they entered the room, they found a child crying. Lilavati made an enquiry as to who was the mother of the child and was told by Seema that the child was of her maternal aunt. Seema further stated that her maternal aunt had a stall at the fair at Kalika temple and that the child had been brought by them as she was crying on the stall. That after about 20 to 25 minutes, the child again raised a hue & cry. This witness told his mother to see what had happened on the first floor. His mother Lilavati accordingly went to the room occupied by the accused and later came down and told her son Ajit that she had instructed the persons of room no.6 to vacate the room. Accordingly, the 3 ladies and the children left the room after settling their dues. This witness also proved the entries in the register of his lodge which indicated that Seema had signed the register of lodge and had left the lodge on 18.10.1994. He identified Seema and Renuka in the court. This witness was also shown the group of photos and he identified 4 photographs of the dead body of Anjali i.e. (Exhs.87/1, 87/2, 90 & 91) as being the girl who was with the accused and Anjanabai in his lodge on 18.10.1994. (Pw 12) Ajit Pahade also identified the photographs of the dead body of Anjali in an

identification parade held by the Special Judicial Magistrate (PW 128) Ulhas Korane. The holding of such identification parade on 28.11.1996 in respect of one photograph (Exh.87) out of bunch of photographs of deceased Anjali is further proved by the prosecution by examining (PW 128) Special Judicial Magistrate Ulhas Korane. The prosecution has also examined (PW 19) Maruti Sonar who was the panch in respect of the memorandum prepared of the identification parade relating to identification of the photographs of Anjali on 28.11.1996. This witness has also identified the accused in her identification parade held by (PW 130) Shivaji Powar. The holding of this identification parade has been proved by examining (PW 130) Shivaji Powar. The evidence of (PW 12) Ajit Pahade is corroborated by the register in which can be found an entry (Exh.96) and which has been duly proved and exhibited by the prosecution. This entry is in the hand-writing of Seema and indicates that she was alloted room no.6. The number of persons staying in the room has been indicated as 5. The purpose of visit has been shown as Dev-darshan. Her age is shown as 19. The arrival date is shown as 11.10.1994 and the departure as 18.10.1994. All these entries corroborate the version given by (PW 12) Ajit Pahade. The prosecution has also examined (PW 14) Lilavati who was the mother of the lodge-owner Ajit Pahade. She states that on

11.10.1994 she and her son Ajit were sitting in the office of the lodge on the ground floor. At about 6.00 P.M., 2 to 3 ladies alongwith 2 to 3 small children came there and requested for a room in the lodge. Lilavati enquired as to where from they had come, to which they replied that they had come from Pune for the purpose of Dev-darshan. However, there were no male members with these ladies. Lilavati told them that no room was available. However, the ladies pressed her to give a room as there were small children with them and accordingly, after some persuation, room no.6 was given to this group after an entry was effected in the register by Seema. This witness identified Seema in the court. She further stated that this group stayed in the lodge for 8 days and left on the day of Kojagiri Poornima. On the day when they left, she and her son were sitting in the office of the lodge at 9.30 P.M. They heard a noise of crying of a child. She and her son went to the first floor. Door was closed. On knocking the door, they found a child aged about 2 to 2 & 1/2 years with Seema and the child was crying for her mother. She enquired with Seema as to who this child was and as to why she was crying and she was told by Seema that child belonged to her maternal aunt who had a stall at the fair of Kalika mandir. She was further told that as the child was troubling her aunt it has been brought by Seema. This witness has also identified a photograph

(article-87/1) which is of dead body of Anjali from among several photographs. She had also similarly identified photographs (Exh.90 & 95). Alongwith her son Ajit, she had identified the accused in an identification parade held on 8.11.1996 by (PW 130) Shivaji Powar. She had also identified photographs of the dead body of Anjali from the 7 to 8 photographs in an identification parade held by (PW 128) Ulhas Korane, Special Judicial Magistrate on 28.11.1996. As stated above, the holding of the said identification parade on 28.11.1996 and the identifications made therein are proved by the prosecution by examining (PW 128) Ulhas Korane, Special Judicial Magistrate as well as (PW 19) Maruti Sonar, the panch in respect of the memorandum prepared. It appears that there is some minor discrepency in respect of the dates on which the witnesses (PW 12) Ajit and (PW 14) Lilavati claimed to have identified the photographs in an identification parade. While they have stated that identification parade was held on 30.11.1996. It appears that identification parade was actually held on 28.11.1996. The discrepency is minor and understandable after a long lapse of time. From the reading of the aforesaid evidence, we find that there is no serious challenge to this evidence and nothing has been elicited in the cross-examination of these independent witnesses to falsify the prosecution case. The prosecution has also examined

(PW 16) Milind Gangurde who is the Panch in respect of the identification parade held by Shivaji Powar (PW 130) in which the accused were identified by (PW 12) Ajit and (PW 14) Lilavati on 8.11.1996. In connection with the aforesaid evidence, the prosecution further examined (PW 20) Ram Murlidhar Muthe who was the panch in respect of the seizure of the register. The evidence of the approver which is in the nature of an extra judicial confession made to him by the accused regarding the kidnapping of Anjali as corroborated by his own confessional statement also helps the prosecution in proving the aforesaid circumstance. In our view, the aforesaid evidence conclusively proves the aforesaid circumstance.

(iii) Anjali not being seen with the accused at Pune prior to the date of the kidnapping i.e. 18.4.1994 and later being seen with the accused at Khopade Bungalow, Gondhali nagar, Pune after the kidnapping, giving of false explanation to witnesses regarding this child and Anjali not being seen by witnesses after Diwali that year :-

. The aforesaid circumstances were sought to be proved by the prosecution through the evidence of (PW 48) Tryambak Khopade. This witness stated that house no.970 of Gondhali-nagar was owned by his brother-in-law i.e. Shamrao Bhosale. His

brother-in-law gave him a direction to look after this house. This witness had rented house no.970 to the accused, Anjanabai and Kiran. The family had come to reside in this house at the end of August-1994 and continued to reside in this house for almost a year till 28.8.1995. The house was taken on rent for Rs.900/- alongwith a deposit of Rs.10,000/-. This witness identified the accused, Renuka, Seema and Kiran in the court as the persons who were given house no.970 situated at Gondhali-nagar area of Pune on rent. The prosecution then examined (PW 46) Kantabai Borkar who was the neighbour of the accused and who resided near house no.970 situated at Gondhalinagar. This witness Kantabai stated that she knew Anjanabai, Renuka, Seema and Kiran for a period of more than 1 to 1 & 1/2 years. They used to meet at a public tap in order to take water. This public tap was situated near the house of (PW 47) Shakuntala Jadhav. She stated that after Kojagiri poornima, once Renuka & Seema had come to the water tap alongwith a small girl who was aged about 2 & 1/2 to 3 years. Her appearance was of fair complexion. The girl was repeatedly crying. This witness asked Seema why the girl was crying. Seema told her that the girl was belonging to a relative from their village. The girl was crying because her mother was sick. This witness had once seen Kiran carrying this girl on a bicycle to a dispensary. She saw

this girl with the accused for a period about 1 month to 1 & 1/4 month and after about 15 days from Diwali, this girl was not seen by her. She stated that the name of this girl was Pinky which was the name given to her by Renuka, Seema & Anjanabai. Later, on not noticing presence of Pinky, she had asked Seema as to where this girl had gone. Seema told her that the mother of the girl was discharged from the hospital and Kiran had sent the girl back to her house. This witness identified several photographs of the dead body of Pinky (Exh.87/1, 87/2, 87/3 and 90) as being the girl whom she had seen with the accused in Gondhalinagar area. This witness also identified the photographs of the dead body of Pinky from amongst other photographs at the identification parade held by (PW 128) Ulhas Korane on 28.11.1996. As stated earlier, in respect of the identification parade, both the (PW 128) Ulhas Korane, who is the Special Judicial Magistrate who held this identification parade and (PW 19) Maruti Sonar, the panch in respect of this identificatin parade were examined by the prosecution. The proved holding of such a parade and the identificatios of the photographs of Anjali made therein. The prosecution then examined another neighbour by name (PW 47) Shakuntala Jadhav. This witness stated that she was residing at Gondhalinagar in front of the house of Khopade. She knew the accused, Anjanabai and Kiran as they were staying at their

neighbourhood for 1 to 1 & 1/2 years. After Kojagiri Poornima she saw one girl in the house of the accused aged about 1 to 1 & 1/2 years. Name of this girl was Pinky. Both the accused and Anjanabai used to call that girl by that name. She had asked Renuka about the girl Pinky and as to whom she belonged to. Renuka told her that the girl was of their relative who resided out of Poona. Renuka also told her that the mother of that girl was sick and therefore, they brought the girl with them as nobody was there to look after the girl. Pinky was with the accused for a period of about one month. That after Diwali, this girl Pinky was not found with the accused. This witness identified the photos of the dead body of Pinky (Exhs.90, 91, 87/1, 87/2 and 87/3) as the photos of the girl seen by her alongwith the accused. She also identified photographs of the dead body in the test identification parade held on 28.11.1996 by (PW 128) Ulhas Korane. She identified the accused in the court. Her evidence relating to identification was corroborated by the evidence of (PW 128) Ulhas Korane, Special Judicial Magistrate and the panch (PW 19) Maruti Sonar in respect of the holding and identification at the test identification parade relating to the photographs. There is absolutely nothing in the cross-examination of any of these witnesses to cast a doubt on the version as stated by them. These witnesses had no reason to depose

against the accused persons. They are independant witnesses. The evidence of Kiran (PW 1) corroborates the evidence given by these witnesses and we have no hesitation to hold that the circumstances as aforesaid have been proved through this evidence led by the prosecution.

(iv) Finding of the dead body of Anjali on 23.11.1994 :-

. This circumstance has been sought to be proved by the prosecution, firstly by examining (PW 22) Rajendra Sankpal. This witness was doing the business of running a nursery in the Hadapsar area of Pune. He stated that on 23.11.1994 when he was coming towards his nursery, he saw some persons gathered outside his nursery. He then saw that the dead body of a child aged about 2 to 2 & 1/2 years was lying there. He noticed that there were ligature marks on the neck of that body. He then went to the Hadapsar police station and lodged a report. (PW 25) Narsinh Kendgale who was a Police head constable then accompanied Rajendra to the spot where the dead body of the child was lying. He prepared a panchanama of the scene of the spot (Exh.143) and carried the dead body to Sasoon hospital where he prepared the inquest panchanama. (PW 24) Sudhir Karane had accompanied this Police constable and had taken 3 photographs of this dead

body. These 3 photographs are exhibited at Exhs. 89, 90 & 91. He proved these photographs and their negatives which were handed over by him to the police. (PW 23) Nitin Korade was examined by the prosecution as the panch to the inquest panchanama (Exh.145). He stated that there were injuries on the chest, thigh and back of the dead body and ligature mark around the neck of the length of about 7 inches. There is absolutely no challenge to this evidence by the defence and since these photographs have been identified by various other witnesses who have seen the child while she was living, in our view the circumstance of finding of the dead body of Anjali has been established.

(v) Finding of injuries on the dead body of Anjali

. This circumstance was sought to be proved by the prosecution by examining (PW 131) Dr.Laxmikant Bade. This witness had conducted the post mortem on the dead body of Anjali. He drew the post mortem and the post mortem indicates that there were in all 10 antemortem wounds found on the dead body of Anjali. These wounds include contusions, fracture of the teeth, abrasions, contused abrasion, linear imprint abrasion and faint ligature mark on the back of the neck. He opined that the death of the child was due to asphyxia as a result of smothering. There is absolutely no challenge to this evidence of the

Doctor and hence, this circumstance can be said to have been proved.

(vi) The lack of explanation about presence of Anjali with them by the accused :-

. The accused in their 313 statements have given no explanation what-so-ever as to how Anjali came to be with them. This by itself is a circumstance which can be used against the accused.

. In our view, in the aforesaid circumstances, the fact that Anjali was kidnapped and murdered as claimed by the prosecution can be said to have been proved beyond reasonable doubt. Upon the aforesaid evidence, in our view, the accused would be liable to be convicted under Sections 363 & 365 read with 34 of IPC, and under Section 302 r/w 34 of IPC and Section 201 r/w 34 of Penal code, for the kidnapping, murder and attempt to dispose of the evidence relating to the dead body of Anjali.

12. **As regards the incident relating to the child Raja @ Swapni**l, the circumstantial and corroborative evidence against the accused is as under :-

(i) A lodging of the kidnapping report on 7.3.1995 by the child's mother Sharmila Ghodgire (PW 112). It was the prosecution case that the child Raja @

Swapnil was kidnapped in the first week of March-1995 from the S.T.stand at Kolhapur and killed in the 2nd week of March-1995 in the house of Khopade. His body was then thrown in the Khandala ghat immediately after the killing. The aforesaid circumstance is proved by the prosecution through the evidence of (PW 112) Sharmila Ghodgire. This witness is the mother of the child Raja @ Swapnil. She stated that on 6.3.1995 she had gone to village Nagaon and was returning from Nagaon to Kolhapur by S.T. Bus. She reached Kolhapur at 3.00 P.M. She wanted to go at her village Talandage. Her son was with her. At the Kolhapur S.T. stand one lady came near her and enquired as to where she wanted to go. Sharmila told this witness that she wanted to go to Talandage. The lady who had made the enquiry then sat with her and was chatting with her for about 1 to 1 & 1/2 hours. She took her son with her by saying that she was going to buy a banana. She gave a basket containing a towel to this witness. However, when the lady did not return, Sharmila started to search for her. However, she could not trace either the lady or her son. She continued to search till 8.00 P.M. When her son Swapnil was taken, he was wearing silver rings in his wrist and gold muddis in his ears. She then went to the police station and lodged a complaint of kidnapping. She identified the FIR lodged by her and her signature thereon. She stated that the discription

of the lady was that she was slim by appearance, wheatish in complexion and aged about 28 years. In the court she identified Seema as being the woman who had approached her and taken away her child. She stated that on 14.12.1996, a test identification parade was held by a Magistrate and that she had identified accused Seema in the test identification parade. There is virtually no cross-examination of this witness. On behalf of the defence, it was pointed out that the discription given by this witness could not have been that of Seema since Seema was fair and at the relevant time must have been about 20 years of age. In our view, the discrepencies in the age mentioned cannot be given much importance. It cannot be forgotton that this witness was testifing in the court more than 4 years after the incident. Besides, to her identification in the court, there is corroboration in the form of identification at the test identification parade which was held on 14.12.1996 i.e. much earlier in point of time. There is absolutely no cross-examination in relation to the test identification parade, save and except to suggest that it was never held. Identification relating to the test identification parade has been further proved by the prosecution by examining (PW 137) Bhimrao Patil, Special Judicial Magistrate. He speaks about the holding of such an identification parade on 14.12.1996. From his evidence it can be

seen that (PW 112) Sharmila identified Seema. The version of this witness that Sharmila also identified Renuka & Anjanabai appears to be a bonafide mistake. It can be seen from the memorandum of identification parade (Exh.310) that Sharmila identified Seema alone and did not identify Renuka or any other person. The prosecution further examined (Pw 85) Ramrao Magdum who was the panch witness to the test memorandum panchanama (Exh.310). The lodging of the FIR by (PW 112) Sharmila has also been corroborated by the evidence of (PW 110) Head Constable Baburao Hukkeri who stated that Sharmila came to the police station on 7.3.1995 at about 7.30 to 7.45 P.M. and lodged an FIR pertaining to the kidnapping of the child which was registered under C.R.No.54/95 under Section 363 of the IPC. He has proved the said FIR (Exh.423). In our view, all these facts prove the aforesaid circumstance.

(ii) Identification of a basket and towel by the approver Kiran :-

. The basket containing a towel which was left by Seema with Sharmila was seized by (PW 111) PSI Ajit Khadake who was then attached to the Shapur police station and who had taken over the investigation from (PW 110) Head Constable Hukkeri. This witness had prepared a panchanama of the scene of the offence on 8.3.1995. He attached the basket and a

towel on the same day. He recorded the statement of 5 witnesses and made an attempt to search the child as well as the accused but since they were not detected, he sent a A-summary report to the concerned Magistrate which was granted by the court. In so far as the seizure of the basket and a towel are concerned, the prosecution further examined (PW 113) Ashok Jadhav. (PW 1) Kiran identified a plastic bag which according to him was purchased by him for Seema about 2 days before the kidnapping and which remained with the lady whose child was kidnapped at the Kolhapur S.T.stand. He described the plastic bag as being black & red in colour with a portion in yellow colour. The towel was not put up for identification before him.

(iii) Version given by Kiran regarding kidnapping and murder :-

. Kiran has given a version regarding the kidnapping of Raja @ Swapnil which is at variance to that given by (PW 112) Sharmila. He claims that in March-1995 he alongwith the accused, Anjanabai and their children had been to Kolhapur. One day at about 2.30 to 3.00 P.M. at the S.T.stand, Kolhapur, Renuka, Seema and Anjanabai introduced themselves to one lady. The lady with whom the talk was going on told them that she was going to bring a banana and in the meanwhile, the child which was with Seema was

kidnapped by her. Seema told Kiran that the basket remained with the lady and one towel had been left in the plastic bag. Kiran told Seema it was better to leave the place instead of pursuing the plastic bag and therefore, they left the S.T.stand and went into Kolhapur city. Thereafter they left Kolhapur and returned to the house of Khopade at Pune. Renuka kept the name of the child as Raja. One day when the child Raja started crying, Seema dropped Raja on the flooring of the house itself and Raja died on the spot. We find that there is material variance in the version given by Kiran (PW 1) and that of given by (PW 112) Sharmila regarding the kidnapping of Raja. Firstly, Sharmila does not speak a word about being approached by Renuka or Anjanabai and has not identified them in the test identification parade held by (PW 137) Bhimrao Patil. The version of Sharmila is that Seema took the child and went away to buy a banana. The evidence of (PW 1) Kiran however is that the lady herself gone away to buy bananas.

. From the aforesaid, on an overall assessment, we find that there is evidence to indicate that Seema kidnapped the child Swapnil from (PW 112) Sharmila on 7.3.1995. From this evidence and from the lack of any explanation coming forth from the accused, it can be said that the charge of kidnapping of the child of Swapnil @ Raja can be said to have been

proved. However, it is difficult to accept the evidence relating to the killing of Raja which only consists of the uncorroborated testimony of (PW 1) Kiran. As stated here-in-above, Kiran has attributed the killing of the child Raja to Seema and stated that when Seema was carrying the child, the child started crying, therefore, Seema dropped Raja on the floor. This version given in the substantive evidence is a complete omission in his confessional statement. This omission has also been proved by the defence through the evidence of (PW 143) Vasant Sapre who recorded the confessional statement. In so far as disposal of the dead body of Raja, once again, the only evidence is that given by (PW 1) Kiran who claimed that the dead body was thrown in the Khandala ghat. The dead body of Raja was never recovered and in the circumstances, there is no evidence relating to any injuries suffered by Raja. Nobody has seen Raja together with these accused after the kidnapping, and there is no identification of the photograph of Raja by any witness. In our view, due to the absence of corroborative evidence, the benefit of doubt as regards the charges under Section 302 r/w 34 and Section 120-B, 201 r/w 34 and Section 120-B of IPC in so far as child Raja is concerned, will have to be given to the accused. However, the accused would be liable to be convicted for the offences punishable under Sections 363 & 365 r/w 34 of the

Penal Code.

13. **As regards the incidents pertaining to the child Shraddha @ Bhagayshree @ Rani**, the circumstantial and corroborative evidence is as under :-

(i) Filing of the missing report by the grand-mother of the child on 22.4.1995 and FIR relating to the offence of kidnapping on 6.5.1995 :-

. This circumstance is sought to be proved by the prosecution by examining (PW 33) Vijaya Mali who is the grand-mother of the child Bhagayshree. She stated in her evidence that in the year 1995, her daughter Joti alongwith her 2 children Yogesh aged about 5 years and Bhagayshree aged about 1 year & 9 months were residing with her. Her daughter used to go to college as she was doing her M.A. That on 22.4.1995, She had gone to the Mahalaxmi temple at Kolhapur at 11.00 A.M. Yogesh and Bhagayshree went with her when she gone in the temple. Bhagayshree was lost in the area of Mahalaxmi temple. She searched for the child for 2 hours. As the child could not be traced, she filed a missing complaint at Juna Rajwada police station. She identified the missing report which she had filed on 22.4.1995 and her signature thereon (Exh.166). She identified the photograph (article-C) being the photograph of

Bhagayshree from her family album. She stated that when Bhagayshree was kidnapped, she was wearing a yellow frock. She was wearing a gold earrings on her person and silver chains in her legs. She stated that she would not be able to identify these ornaments because of a long lapse of time. The fact that she had lodged the missing report was further proved by the prosecution through the evidence of (PW 35) Najir Makandar, who was the PSO incharge of Juna Rajwada police station on 22.4.1995. He proved his signature on the complaint (Exh.166). He stated that a search was made in the area but the child could not be found. The prosecution has further examined (PW 34) Savalaram Mali, who is the grand-father of Bhagayshree. He stated that as Bhagayshree could not be traced inspite of giving of the missing report, on 6.5.1995 he lodged a complaint with the Juna Rajwada Police station regarding kidnapping of Bhagayshree. He proved the contents of the complaint dated 6.5.1995 and his signature thereon. He stated that on 7.5.1995 he had also furnished a photograph of Bhagayshree to the police which was (article-C) attached under a panchanama. As regards the photograph, the prosecution examined (PW 38) Annasaheb Salgar, who was the panch regarding the production of photograph by (PW 34) Savalaram Mali. This photograph (article-C) was proved by this witness and the same has been exhibited as Exh.175). He also proved the

contents of the panchanama (Exh.176) and his signature thereof. The prosecution further examined (PW 36) Anandrao Bhakare, who was the Police head constable at Juna Rajwada police station, who registered C.R.No.65/95 and was the investigating officer when the panchanama (Exh.176) in respect of photograph of Bhagayshree was made. The prosecution further lastly examined (PW 40) Ramchandra Chougale, who was the API attached to Juna Rajwada Police station and who took over the investigation of C.R.No.65/95 from PSI Kadam and was incharge of the investigation till the same was transferred to CID branch. In our view, the aforesaid evidence clearly proves the aforesaid circumstance.

(ii) Accused arriving in Kolhapur on the date of kidnapping and sighted with Bhagayshree later in the same day at Mahalaxmi Dharmashala :-

. As seen from the evidence, Bhagayshree was kidnapped on 22.4.1995. In order to show that the accused were present at Kolhapur on the same day, it must be remembered that the prosecution was relying upon the evidence of (PW 1) Kiran who stated in his evidence that in the last week of April-1995 both the accused and Anjanabai had gone to Kolhapur while he remained at Pune. When they returned to Pune, there was a new girl with them aged about 1 & 1/2 to 2 years. When he asked Renuka as to from where this

child was brought, She told Kiran that the child had been kidnapped from Mahalaxmi temple at Kolhapur. The child was named as Shraddha and was with the family for about 1 to 1 & 1/2 months, after which period the child was killed. Kiran had stated that while accused and Anjanabai had been to Kolhapur in the last week of April-1995, they had stayed at Mahalaxmi Dharmashala. He identified entry no.2736 in the register of Mahalaxmi Dharmashala and the signature of Seema (Exh.26) on the said register. To prove this circumstance, the prosecution also led independent evidence. Firstly the prosecution examined (PW 45) Ganesh Une who was the manager of Mahalaxmi Dharmashala. This witness stated that he was the counter manager at Mahalaxmi Dharmashala on 22.4.1995. That on 22.4.1995 Seema alongwith 2 ladies and 2 children had come to Mahalaxmi Dharmashala. Seema signed the visitors' register of the Dharmashala and made an entry being entry no.2736 on page-66 of the register. She signed at the end of the entry in the presence of this witness and gave all the information as contained in the register (Exh.190). Seema told this witness that the 2 ladies who were accompaning her were her sister and mother respectively. Seema was aged about 18 to 20 years. Her mother was aged about 50 to 52 years and her sister was aged about 20 to 25 years. He identified Seema and Renuka as the 2 ladies who had come to the Dharmashala on 22.4.1995,

in the court. He stated that Seema had demanded the room for 3 days. She was charged Rs.10 towards deposit and Rs.21 towards rent and room no.4 was allotted to this group. He issued the receipt (Exh.191) to evidence payment of charges by Seema. The entry made by Seema indicated her address at Pune and the name of the other 2 ladies as mentioned in the register was Vaishali Kiran Shinde and Kamala Raju Bhor. He stated that he had charged Rs.10.50 towards seva charges and Rs.10.50 towards electricity charges, Rs.21 towards rent and had issued the receipt which contained his signature. He proved the copy of the receipt at (Exh.192). He also proved (Exh.193) which was the office copy of the receipt in respect of the deposit given by Seema. He then instructed Shivaji Gavade who was one of the Peons in the Dharmashala to take the 3 ladies and the children to the room. The ladies returned back within 10 minutes because the room alloted to them was not clean. Since this witness told them that no other room was available, the 3 ladies started to quarrel with him. In view of the quarrel, the Chief Manager of the Dharmashala Mr.Savant came there. Savant tried to convince them, but they were not ready to hear. Then a sweeper by name Deshpande was called and this witness alongwith Deshpande went to clean the room and the room was cleaned. Again after 10 to 15 minutes the 2 accused returned back to him and

demanded bedding, utensils and a stove. These articles were given by this witness to the accused after receiving Rs.78 towards the charges for 3 days, He has issued the receipt, the copy of which (Exh.194) was proved by him. At 10.00 A.M. on that day, all the 3 ladies alongwith the 2 children left the room after telling this witness that they will return back at 2.00 P.M. On the witness asking Seema as to who these children were, Seema told this witness that they were children of her sister and their names were Ashish and Kishor. The family then left the Dharmashala. They all returned at 11.00 A.M. to take the key. One more girl was there with Seema and this girl was crying and calling out for her grand-mother. The age of this girl was about 1 to 1 & 1/2 years. This witness asked Seema as to whose girl she was and was told that she was daughter of her relative. They stated that they would like to leave the room, therefore, this witness handed over the key of the room. Thereafter the family returned all the articles taken from the Dharmashala and after deducting the charges, he returned the balance amount due to the lady. At this stage the original receipt of deposit was returned by Seema. The same was proved by this witness and exhibited as (Exh.95). All the ladies alongwith the 2 children and one girl left the lodge on the same day i.e. on 22.4.1995. This witness stated that the girl whom he had seen was wearing a

yellow frock. She had gold ear rings (dul) and silver strips (chain) on her legs. He identified these articles as (Articles-26 & 27). He identified the photograph of Anjali furnished by her grand-father to the police (Exh.179) as being that of the girl whom he has seen at Mahalaxmi Dharmashala. He also stated that he had identified the accused and Anjanabai in the test identification parade which had been held on 22.11.1996. He lastly identified the accused in the court. The evidence of this witness is corroborated by several documents produced by the prosecution. (Exh.191) is an application dated 22.4.1995 signed by Seema. This application appears to be a proforma application required to be signed for admission in the Dharmashala. It contains a column relating to the persons who would like to reside and the names of the 2 persons are given as Vaishali Kiran Shinde and Kamla Raju Bhor. The room alloted is shown as room no.4. Exhibits 192 & 193 are the Office Copy's of the receipts issued to Seema, in respect of amounts, received from her. Similarly, Exh.194 is the receipt for an amount of Rs.78/- in respect of articles furnished to Seema and Exh.195 is the original receipt for the deposit amount received by the Dharmashala, which original was returned by Seema to the aforesaid witness at the time of departure. The evidence of this witness was further supported by the evidence of (PW 37) Sudhir Randive.

(PW 37) Sudhir Randive was the panch in respect of the seizure of the various registers (Articles-17 to 25) of the Mahalaxmi Dharmashala and was the signatory to the panchanama dated 21.11.1997 (Exh.173). One more register which was not found during the earlier seizure (Article-5) was seized under a separate panchanama dated 11.12.1996 which was proved by the prosecution through the evidence of (PW 72) Mangesh Borgaonkar. In our view, the above referred evidence proves the aforesaid circumstance beyond reasonable doubt.

(iii) Seen with the child Shradha at Baroad between 21.5.1995 to 24.5.1995 :-

. According to the evidence given by (PW 1) Kiran, the entire family consisting of himself, accused, Anjanabai, Ashish, Tushar, Gaurav and other children had gone by bus initially to Surat, the ladies and the children later proceeded to Ahmedabad and Baroda to commit thefts. The party included Bhagayshree @ Shradha. Initially, at Surat, they had halted at Sahil Lodge in front of the railway station of Surat. The room was taken in the name of Seema after effecting necessary entries in the register. They stayed for 4 days at Sahil Lodge. During this period, Anjanabai and the accused alongwith Bhagayshree @ Shradha committed thefts. While the ladies were at work, Kiran used to reside in the

lodge and look after the children. After 4 days, Kiran told the ladies that he had to go to Pune to attend the marriage of his friend. Therefore, he left the room and went to Pune. The ladies and children stayed at Ahmedabad for 5 days after which they returned to Baroda where they stayed for 3 days, ultimately returning to Pune. The prosecution has led independent evidence to indicate that the accused were seen with Bhagayshree @ Shradha when they were residing at Pravasi Gruha at Baroda from 21.5.1995 to 24.5.1995. The first witness that has been examined to prove this circumstance, is (PW 55) Jamubhai Vasava. This witness, at the relevant time was serving as a Manager at the Pravasi Guest House which was under the management of Baroda Municipal Council. He stated that on 21.5.1995 at about 4.00 P.M., 3 ladies with 4 children came to their Guest house and demanded a room. The witness gave them an application form as per procedure, the same was filled-in by the lady named Seema. He stated that they wanted to stay for a day only and gave Rs.140/- towards rent. Seema then signed the register and room no.4 was alloted to this family. They stayed for a period of 3 days and on the next day, they filled an extension form which was also signed by Seema. In the court, this witness identified Seema. He stated that the girl who was with this party was named Shradha and she was crying repeatedly. The family left the Guest house on 24.5.1995. This

witness was shown a photograph (Exh.175) of Shradha. He identified the said photograph as being that of the girl whom he had seen in his Guest house. Since Seema had signed in his presence, he proved her signature on the admission and extension form (Exh.221 & 222) respectively. He stated that on the first day, he had accepted Rs.140/- and at the time of giving an extension, he accepted Rs.280/- and on their leaving, he made a refund after making adjustment. The evidence of this witness is corroborated by the documentary evidence which was seized by the police from Pravasi Gruha. The application form indicates that the same is signed by Seema and bears a date 21.5.1995. The extension form is also signed as Seema Raju Bhor and is dated 23.5.1995. (PW 56) Ramchandra Shedage is yet another witness examined by the prosecution to prove this circumstance. This witness was a Peon attached to the said Guest house. He stated that on 21.5.1995 at about 4.00 P.M., one old lady, 2 young ladies and 4 children came to the guest house. The girl child with this group was aged about 2 to 2 & 1/2 years and was repeatedly crying. Since the girl used to cry, the old lady used to move around with her in the Varandha and this witness had asked the elder lady as to why this girl was crying. The elder lady replied that since the girl was missing her mother, who was her maternal aunt, she was crying. He stated that the 2 ladies who accompanied

the elder lady were Seema & Renuka. He identified the photograph of Bhagayshree @ Shradha (Exh.175) in the court. He also identified Seema in the court. The evidence of the aforesaid 2 witnesses, in our view, is sufficient to establish the aforesaid circumstance. The criticism that was directed against these witnesses was that, it would be difficult for these witnesses to identify the photograph of the child after long lapse of time. It cannot however, be forgotton that the accused and children were staying in the Guest house for 4 days according to these witnesses, the girl child used to cry and they had occasion to see her frequently. It cannot be forgotton that these witnesses are completely independent witnesses. We thus hold that this circumstance is proved.

(iv) <u>The accused being seen with Bhagayshree @ Shradha in the house of Khopade in Gondhalinagar area of Pune after the kidnapping from Kolhapu</u>r :-

. This circumstance is proved by the prosecution by examining (PW 46) Kantabai Borkar. She has stated that the family of the accused were residing next to her for 1 to 1 & 1/2 years. In the last week of April-1995, she saw one more girl aged about 1 to 1 & 1/2 years with Anjanabai and accused. This girl was wearing a yellow frock and had earrings with a red stone in her ears. She was also having silver

strips on her legs. This girl used to sit on the plat-form near the house and cry for her mother. When the witness asked Renuka as to who this girl was and why she was crying, she was told by Renuka that the girl belonged to her maternal aunt who was ill. She told this witness as there was nobody to look after this child, she had brought this girl with them. Shradha was also being brought by the accused at the public water tap. This witness saw Shradha with the accused for a period of 15 to 20 days. In the month of May-1995, at about 10.00 to 10.30 A.M. all the ladies alongwith the children and Kiran were seen by her, going out of the house. This witness asked Renuka as to where they were going in the morning itself. Renuka told her that they were going out of Pune. This witness identified a photograph of Shradha (Exh.175) as the photograph of the girl alongwith the accused. She also identified a photograph of Shradha similar to the photograph (Exh.175) in an identification parade held by a Special Judicial Magistrate (PW 143) Vasant Sapre on 30.11.1996 from amongst 7 photographs kept on the table. She identified both Seema & Renuka in the court. To the same effect, is the evidence of (PW 47) Shakuntala Jadhav who was another neighbour of the family of the accused and who had seen the family of the accused for 1 to 1 & 1/2 years. She stated that in April-1995 she saw one more girl residing with the family of the

accused. The accused used to call this girl as Shradha. Renuka had told this witness that Shradha was the daughter of her maternal aunt residing in the village. Urmila was the daughter of this witness. Urmila used to bring Shradha to her house to play with her. Shradha was with the accused for a period of 15 to 20 days. This witness stated that when she saw Shradha, she was wearing a yellow frock. She identified the photograph of Shradha (Exh.175) as the girl whom she saw with the accused. She had identified the said photograph (Exh.175) in an identification parade held on 30.11.1996 by (PW 143) Vasant Sapre. This photograph was identified from 7 photographs kept by the Magistrate on the table. The identification of the photograph of Shradha by the aforesaid witnesses (PW 46) Kantabai Borkar & (PW 47) Shakuntala Jadhav in a test identification parade held by (PW 143) Special Judicial Magistrate Vasant Sapre was also proved by the prosecution by examining the said Special Judicial Magistrate. He has proved the panchanama (Exh.209) in respect of the said test identification parade and has identified his signature on the memo. He stated that (Exh.175) is the same photograph identified by these witnesses on that day. He testified that his signature and signature of the panchas had been put behind the back of the photographs and on his identification the same were exhibited as Exhibit No. 201/1 & 201/2. He

testified the manner in which the identification parade was held and stated that the single photograph was mixed with 6 dummy photographs. There is nothing of any substance elicited in the cross-examination of this witness. In our view, the aforesaid evidence clearly proves the circumstance mentioned here-in-above.

(v) Non sighting of the child Shradha in Pune by (PW 46) Kantabai Borkar & (PW 47) Shakuntala Jadhav after May-1995 :-

. In their evidence, both these witnesses, stated that they saw Bhagayshree @ Shradha with the accused for a period of 15 to 20 days. (PW 46) Kantabai stated that she saw the accused Anjanabai, Kiran and the children including Shradha going out of the premises in May-1995. She had asked Renuka as to where they were going, upon which Renuka told her that they were going out of Pune and were returning after 10 to 12 days. The girl Shradha was not with them when they returned. Then this witness asked Renuka where Shradha was and was told that Shradha was left with her maternal aunt who was now feeling well. (PW 47) Shakuntala Jadhav also stated that after a period of 20 to 25 days, she asked Renuka about Shradha and Renuka told her that Shradha was sent back to her mother as her mother was alright and feeling well. This evidence proves the

aforesaid circumstance.

(vi) The complete absence of any explanation from the accused about the presence of Shradha with them and the absence of Shradha after the end of May-1995 :-

. In the 313 statements, the accused have not given any explanation what-so-ever about the manner in which Shradha came to live with them in or about the last week of April-1995 or about Shradha not being seen with the family after they returned to Pune. This lack of explanation in the 313 statement coupled with the false explanation given by Renuka to (PW 46) Kantabai and (PW 47) Shakuntala which we have already referred to here-in-above is an additional circumstance against them :-

(vii) The selling of the ornaments worn by Bhagayshree @ Shradha to a Goldsmith by Renuka :-

. This circumstance is proved by the prosecution through the evidence of (PW 49) Bharat Maid. This witness was a Goldsmith by profession and the owner of a jewellery shop by name Pravin Jewellers. He knew Renuka Shinde personally as she had earlier sold gold and silver ornaments to him. He stated that in June-1995, Renuka came to his shop which was situated at Karve road in Pune. She told him that

her son was sick and she was in need of money for his treatment. She said that she wanted to sell and/or mortgage the gold rings & silver painjans. On the witness asking her, she told the witness that the receipt for these ornaments were lost. Goldsmith then retained the ornaments and gave an amount of Rs.800/- to Renuka. These ornaments were subsequently seized from the shop of this witness in their original form under a panchanama dated 23.11.1996. He identified articles-26 & 27 as the gold earrings and silver painjans which were seized from his shop. The seizure of these ornaments was further proved by the prosecution through the evidence of (PW 51) Pradeep Bakare who was the panch in respect of the memorandum statement given by Renuka and the subsequent discovery and seizure of the aforesaid gold and silver ornaments from the shop of (PW 49) Bharat Maid. This witness stated that on 23.11.1996 he was called to act as a panch and in his presence, Renuka stated that on 22.5.1995 a girl had been kidnapped from the area of Mahalaxmi temple and the earrings and the painjans worn by this girl were sold by her at one shop at Pune. She offered to show the shop. Accordingly, Renuka led the police and panch party to the shop belonging to (PW 49) Bharat Maid and the ornaments were recovered. There is nothing in the cross-examination or other evidence which would lead us to dis-believe this discovery said to have been

made at the behest of accused Renuka. It must be remembered here that these ornaments have been identified by (PW 46) Kantabai, (PW 47) Shakuntala Jadhav and (PW 1) Kiran. In our view, all the witnesses concerned, (except Kiran) are independent witnesses. There is nothing to shake their version in their cross-examination and therefore, this circumstance can be said to have been proved by the prosecution.

. In conclusion, in our view, the various circumstances which according to us have been proved here-in-above, form independent links, which together form a complete chain of circumstances on the basis of which it can be held that the prosecution has proved the kidnapping and murder of the child Bhagayshree @ Shradha. According to the evidence of (Pw 1) Kiran, Shradha was killed by Anjanabai by pressing her neck in a taxi on one of their visits to Surat and her dead body was disposed off on the side of the road by the ladies at about 1.30 A.M. somewhere between Thane and Surat. We are aware of the fact that dead body of Shradha was not found in this case. It is not necessary in every case that the corpus delecti must be found in order to prove the case of murder. In the present case we have the evidence of (PW 1) Kiran relating to the disposal of the ornaments taken from the dead body of Shradha while the body was disposed off.

The recovery of these ornaments is a proved circumstance which would aid us in the conviction of murder. The accused would be liable to be convicted for the offence under Section 363 & 365 r/w 34 of IPC in respect of the kidnapping of Bhagayshree @ Shradha, would be further liable for conviction under Section 302 r/w 34 of IPC in respect of the murder of Bhagayshree @ Shradha and would lastly be liable to be convicted for offences under Section 201 r/w 34 of IPC for concealing the evidence pertaining to the murder of the child Bhagayshree @ Shradha.

15. **Incident relating to kidnapping of Kranti :-**

. Kranti was a child aged about 9 years. She was a daughter of (PW 21) Pratibha Mohan Gavit, who was the step-mother of the accused. Pratibha Mohan Gavit was the 2nd wife of Mohan Gavit who was the earlier husband of Anjanabai. The prosecution has sought to prove the charge of kidnapping of Kranti firstly through the evidence of (PW 21) Pratibha Gavit. This witness stated that she married Mohan Gavit in 1986 and in 1995 they had gone to stay in Nasik. Kranti, Devali and Dipali were the 3 daughters born to her from Mohan. Kranti used to go to a school situated at the Panchavati area of Nasik. At the time of the incident, she was in the 3rd standard. Devali used to attend Rani Laxmibai

School situated at Sita Gumpha, Panchavati. She was studying in the first standard. Anjanabai was the first wife of Mohan and the accused were the children of Mohan from his first wife. That on 29.8.1995 at about 9.30 P.M. both the accused had come to their house and stated that Anjanabai was repeatedly remembering Kranti. They wanted to take Kranti to meet Anjanabai. However, Mohan told the accused that he could not leave Kranti because she was under going her examination. It was only upon the persistent insistence of the accused that Mohan ultimately gave his consent to take Kranti with them. The accused gave them the address where they were staying and promised to send Kranti back on the next day morning. This promise was however, not fulfilled. Pratibha and husband Mohan then went to the address furnished by the accused but could not find the accused, Anjanabai or Kranti. They searched for 4 to 5 months and continued the search even thereafter. During all this period, Mohan used to tell her that there was no problem as the accused were close relatives and would ultimately sent Kranti back. That on 20.10.1996, Pratibha had been to the market to bring vegetables. She accidently saw both the accused. She enquired from them as to where Kranti was and were told that Kranti was with their mother Anjanabai. They also told Pratibha that as she had spoiled the marital life of their mother Anjanabai, she would not get back her

daughter Kranti. Thereafter, Pratibha came back to their house and informed her husband about the incident. She and her husband returned to the market place where the accused has been seen but could not trace the accused. They then went to the Katya Maruti police chowky and a constable by name Pardeshi accompanied them to search for the accused. During the search both the accused were found in the same area by the police. They were immediately taken into custody and taken to the police station. A formal complaint was lodged by Pratibha at the Panchavati police station on 22.10.1996 and through the evidence of Pratibha, the prosecution proved her signature on the complaint. The said complaint corroborates the evidence of this witness. On 19.11.1996 this witness was called in the office of CID Nasik alongwith photographs of Kranti. She carried 2 photographs of Kranti and the same were attached under a panchanama. She identified the photograph (exh.139) as being the photograph of her daughter. In the court also she identified 2 articles being articles EE/1, EE/2 to be the photographs of her daughter Kranti. The fact that Kranti was taken by the accused is further sought to be corroborated by the evidence of (PW 32) Kishor Makwana, who was the owner of flat no.A/5 situated in Nakool Apartment on N.D.Patel Road at Nashik. One broker by name of Chandrakant had brought Renuka to meet him and he had given this flat on monthly

rent of Rs.1500/- subject to payment of a deposit of Rs.10,000/-. Rinku Shinde was his tenant and an agreement was made with her giving the flat on lease for the period of 11 months. The agreement was signed by this witness, Rinku @ Renuka and Chandrakant Jadhav. The agreement was dated 25.8.1995 (Exh.159). This witness stated that alongwith Rinku one young lady who was her sister and an older lady was their mother were also residing. He identified Rinku as Renuka and her sister as Seema. He stated that the family had paid an amount of Rs.10,000/- in cash and they had stayed there for a period of 8 months. That he used to visit this flat alongwith intending purchasers. He had seen that the family of the accused consisted of 3 ladies and 3 children. On one occasion when he went there about 2 to 2 & 1/2 months after the arrival of the accused, he saw one more female child aged about 1 to 1 & 1/2 years. He identified the photograph Gauri to be that of the child whom he had so seen. It appears from the evidence of this witness that the owner had no occasion to see the kidnapped girl Kranti. However, the prosecution led further evidence of another lady (PW 41) Vidya Kulkarni who was residing in the same apartment since 1991. It appears that Nakool apartments consists of 2 buildings and while the family of the accused were staying in building no.1, this witness was staying in flat no.3 of building no.2. The

galleries of these 2 flats were however, facing each other and the distance between these gallaries was only 5 to 6 feet. The witness stated that from her flat she could look into the flat of the accused. She stated that when the family of the accused came to reside there during the period 29-30/8/1995, their family comprised of Anjanabai, accused, 4 male children and a girl aged about 10 years. The height of this girl was about 4 to 5 feet and the girl was not very fair. She was told by Anjanabai that the name of this girl was Kranti and she was a daughter of the 2nd wife of her ex-husband. Anjanabai used to beat Kranti. This witness had questioned Anjanabai about the beating of Kranti but Anjanabai told her that it was none of her business. This incident of the beating of Kranti was told by this witness to her husband, but the husband told her not to pay attention to the affairs of others. According to her, Kranti was with this family up to 4.12.1995. On that day she had seen both the accused alongwith Anjanabai going out of the house with the 4 children and Kranti and had asked Anjanabai as to where they were going. Anjanabai replied that they were going to Pune. The family returned after 5 to 6 days but Kranti was not found with them. This witness identified both the accused in the court. She also identified the photograph at (Exh.139) and the photographs (articles EE/1 & EE/2) as the photographs of the girl Kranti who used to

reside alongwith the family of the accused. These photographs were identified by her in the court from amongst a bunch of photograph handed over to her. For the purpose of completion of the picture it must be stated here that the photographs of Kranti produced on 19.11.1996 had been seized under a panchanama (Exh.163) which was proved through the evidence of (PW 31) Pandurang Karwar. There are other witnesses who have seen the accused alongwith Kranti. (PW 122) Ganpatrao Chavan was a taxi driver. According to him one day while his taxi was parked near the S.T.stand Kolhapur, one male, 3 ladies, 3 small boys and one girl came near his taxi. One of these ladies was an elderly person aged 50 to 55 years. The 2nd lady was aged about 24 to 25 years. The 3rd was aged about 24 to 25 years and was a married lady. The male was aged about 30 to 35 years and was strong and stout. The married lady told him that they wanted to go to Narasoba Wadi. They hired his vehicle. The male and the girl aged about 7 to 8 years were sitting with him whereas the 3 ladies and children were sitting behind. After receiving an advance, he proceeded towards Narsoba wadi. After covering a distance of 7 to 8 K.M., the girl who was sitting on the front side started crying and was slapped by the elderly lady sitting behind. When they reached Narsoba wadi, after about 1 to 1 & 1/2 hours, the elderly lady asked him to stop the vehicle near a Sugar cane

field. All the persons got down. The old lady sat outside the vehicle and asked him to proceed ahead and wait near the taxi stand. After some time, the 3 ladies, 3 boys and the male came to the taxi stand. He enquired as to what had happened to the girl and was told that the mother of the girl had met the family at the fair at Wadi and the girl had gone away with the mother. This witness identified Kiran as the male. He also identified in the court both the accused as the two females who had engaged his taxi. He further identified in the court the photograph of Kranti (Exh.139) from amongst a bunch of photographs. This witness had also identified the accused and Anjanabai in an test identification parade held by the Special Judicial magistrate (PW 143) Vasant Sapre on 14.12.1996. The prosecution also examined (PW 123) Janabai Sawant who was the manager of Maharaja lodge at Kolhapur. He stated that on 6.12.1995 at about 6.20 A.M. 3 ladies, 1 gents, 3 small boys and one girl aged about 9 years came to his hotel for hiring a room and he had alloted room no.3 to them. The lady who had signed the lodge register in his presence was Seema and she had signed as Seema Raju Bhor. He identified the signature of Seema. He stated that the old lady was not present in the court but he identified Renuka & Kiran as the other female and male who had come to reside at Maharaja lodge. That they left Maharaja lodge at about 10.15 A.M. on the same day. At that

time this witness passed a receipt for the amount of Rs.120/-. He produced the office copy of the receipt at (Exh.464). This witness then identified the photograph of Kranti (Exh.139) in the court from amongst a bunch of photographs. He had identified both the accused in an identification parade held by Vasant Sapre (PW 143) on 14.12.1996. In the said identification parade, he had also identified Kiran Shinde. This witness had also identified the photograph of Kranti (Exh.139) in the test identification parade held by Vasant Sapre. The prosecution examined (PW 143) Vasant Sapre to prove the holding of the test identification parade in respect of the identification of the accused by (PW 123) Savant and (PW 122) Chavan. The panch in respect of the test identification parade (PW 133) Gajanan was also examined. In our view, all this evidence was led to indicate that the child Kranti was found to be living with the accused from end of August-1995. It was however, contended on behalf of the defence that the evidence of (PW 21) Pratibha itself indicated that Kranti was taken after obtaining the consent of her father. In our view, that cannot help the defence. Section 90 of the Indian Penal Code deals with consent known to be given under fear or under mis-conception of fact. The relevant portion of Section 90 is as follows :-

. Section-90 Consent known to be given under fear or misconception.- A consent is not such a consent

as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or ....."

. The Apex court in the case of **Uday V/s. State of Karnataka reported in 2003 (4) SCC 46** has held that 2 conditions must be fulfilled for the application of Section 90. Firstly it must be shown that the consent was given under a misconception of fact and secondly it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception.

. In the present case the accused managed to obtain the consent of the father of Kranti by telling him that Kranti would be returned on the next day. The father of Kranti was clearly under a misconception of fact that Kranti was to be returned home on the next day. It was then contended by the defence that the father and mother of Kranti had been negligent and had not taken any steps to lodge any complaint for more than 1 year. In fact the evidence of Pratibha indicated that the father of Kranti was telling her that Kranti was taken by her relations and would be returned. In our view, once the lack of consent at the time of the taking of the minor child was established, subsequent events will have

no bearing on the question as to whether an offence of kidnapping was committed. The trial court has further disbelieved the story of the killing of Kranti and has acquitted the accused of all charges related to Section 302 & 201, r/w 34 and 120-B of IPC. This acquittal was principally because of the fact that the dead body of the girl Kranti was not found. The State has chosen not to file any appeal against this acquittal and in the circumstances, for the reasons already discussed in detail here-in-above, we would not be in a position to convert the acquittal in respect of these charges into a conviction and therefore, we do not propose to deal with the evidence in this regard. In our view, the conviction of the accused for the kidnapping of Kranti is well founded and the accused would be liable to be convicted for the offence under Sections 363 and 365 r/w 34 and 120-B of the IPC. Section 364 may not be attracted in this case because there is no evidence to indicate that the purpose of taking Kranti from her parents was with the intention to kill her as it appears that Kranti was kept by the accused for more than a year. The intention of kidnapping appears to be to teach the mother of Kranti a lesson for spoiling her marital life.

16. **Incidents relating to the attempt to kidnap the child Devali :-**

(i) Devali was the younger sister of Kranti. According to the prosecution, she was studying in the 1st Std. at Rani Laxmi Bai Primary School, Nasik. The said school was situated in the area of Seeta Gunfa at Nasik. According to the prosecution an attempt to kidnap Devali was made by the accused on 10.10.1996. On that day, (PW 26) Sumanbai who was the peon in the school was standing near the class of Balwadi. The 2 accused came to her. She has described one as a lady aged 25 to 26 years and the other lady aged about 20 years. She identified the 2 ladies in the court as Renuka and Seema respectively. Renuka told her that sister of Devali was sick and that her mother had sent them to get Devali. The witness told her that she was not ready to send the child with them and they should come alongwith the mother of the child. They then attempted to bribe her by offering to pay her Rs.1000/- but the witness refused to agree to this request and hence, they went away. This witness has identified these accused in an identification parade held by (PW 130) Shivaji Powar on 8.11.1996. She had then informed this incident to the teacher of the School (PW 26) Mangala Parnerkar. This teacher Mangala stated in her evidence that on 10.10.1996 at about 2 to 2.30 P.M. she was in the class room and at that time (PW 26) Suman came to her and told her that 2 ladies had been to the school at about 2.00

P.M. and had asked her to allow them to take Devali with them. That this request was made on the footing that they were step sisters of Devali. They had also tried to bribe her with an amount of Rs.1000/-. The prosecution examined (PW 130) Shivaji Powar to prove the identification of the accused by (PW 26) Mangala in an identification parade held on 8.11.1996. The panchanama in respect of the memorandum of parade was proved by the prosecution through the evidence of (PW 16) Milind Gangurde. In our view, all this evidence is sufficient to indicate that these accused with their common intention of kidnapping Devali made an attempt to kidnap her. They would therefore, both be guilty of an offence punishable under Sections 511 r/w 363 r/w 34 of the IPC. There is no precise evidence to indicate that the attempt of kidnapping this child was for the purpose of murder or to put her in danger of murder. In fact Devali was a step sister and it appears that unlike the case of other children the intention was not to use Devali for commission of theft but was to teach her mother a lesson for spoiling the mariatal life of Anjanabai.

17. **As regards the incident pertaining to the child Gouri @ Bhawana** the circumstances and corroborative evidence is as under:

i) Filing of the missing report by the mother

of the child on 4.1.1996.

. This circumstance is sought to be proved by the prosecution by examining P.W.No.17 Chhaya i.e. the mother of the child Gouri @ Bhawana. Chhaya states that on 3.1.12996, her mother Genabai had been to the area of Mhasoba Maidan to purchase vegetables. This area is at a five minutes walking distance from her house. When her mother was purchasing vegetables, her daughter Bhawana was missed from the spot. Her mother came home weeping as Bhawana could not be found. Chhaya and her mother made all attempts to search for Bhawana and ultimately on the next date i.e. 4.1.1996 Chhaya filed a missing report with the police. The contents of this missing report and the signature thereof of Chhaya were proved by this witness (Exh.273). This witness gave a detailed description of her daughter to the police and also handed over a photograph of Bhawana to the police which was taken on record by P.W.No.7-Police Head Constable Sahibrao Wagh. She identified the photograph Article GG as being the photograph of her daughter Bhawana. This photograph was exhibited as Exh.37/C. She also identified in the court three more photographs of her daughter bearing Article No.M-I, MM-II and MM-III, out of which, photographs as Articles MM-II and MM-III were of Bhawana when living and the photograph Article MM-I which was subsequently

exhibited as Exh.288(2) was of the dead body of Bhawana. She had also identified a photograph of child Bhawana in a test identification parade held on 8.1.1997 by Special Judicial Magistrate P.W.No.130 Shivaji Pawar. The filing of the missing complaint is further proved by the prosecution through the evidence of P.W.No.87 Chatursingh Rajput who at the relevant time was the Police Head Constable attached to the Panchavati Police Station. This witness had also recorded the station diary entry No.34 on 4.1.1996 and this entry was proved by him (Exh.313). He also identified that entry in the missing register as it was recorded in his handwriting. He then handed over the investigation to P.W.No.71 Police Head Constable Sahibrao Wagh. P.W.No.71 Police Head Constable Sahibrao Wagh was then attached to Panchavati Police Station as a Head Constable. On taking over the investigation he made a search for the missing girl and gave information as regards this girl in the newspaper alongwith her description. He continued with the investigation for a year and then handed over the same to P.I. Gamane of C.I.D. Crime Branch. The photograph of the child was attached by P.I. Gamane. He also handed over all the documents concerning the case to P.I. Gamane. In our view there is no reason for disbelieving the evidence and therefore, this circumstance is held to be proved.

ii) Child bhawana seen together with the accused after kidnapping in January-1996 and not being seen at the residence of the accused from May-1996.

. It was the prosecution case that Gouri had been kidnapped from the custody of her grand mother near the vegetable market. She was a child aged about 2.1/2 years. She had been kidnapped by the accused in January,1996 and thereafter she was brought in a rickshaw to the flat of P.W.No.32 Kishore Makwana. Kiran was then with the accused. The family including Kiran stayed in a flat of Makwana for about 3 to 4 days with Bhawana. Renuka named this child as Gouri. Kiran then returned to his room at Pune while accused-Anjanabai, Gouri and other children continued to reside in the flat of Makwana. The circumstance of the accused being seen together with the child Bhawana @ Gouri has been sought to be proved by the prosecution through the evidence of P.W.No.32 Kishore Makwana who was the owner of Nakool Apartments where the accused were residing with Bhawana @ Gouri, Anjanabai and other children. This witness has stated that Flat No.A/5 in Nakool Apartments had been taken on rent for a period of 11-months by Rinku @ Renukabai Shinde. The flat was given on rent through a broker by name Chandrakant Jadhav. He identified Renukabai as Rinku in the court. He further identified her younger sister as Seema in the court. He

thereafter, stated that after about 2 to 2.1/2 months he had taken an intending purchaser to the flat to show him the same. He had seen the family of the accused in the flat which comprised of three ladies and three children when he went to show the flat. After about 2.1/2 months he saw one female child aged about 1 to 1.1/2 years. The child was fair looking with curly hairs. He identified the photograph of Bhawana @ Gouri (Exh.237) to be the photograph of the girl whom he had seen alongwith the accused in his flat. He stated that even thereafter, he had seen the said girl 2 to 3 times and the said girl was with the accused when the accused left the said flat. It further appears from his evidence that this witness had identified the photograph of Bhawana @ Gouri on 8.1.1997. This test identification parade was held by P.W.No.130 Sahibrao Wagh and the photograph identified was Article-GG.

(iii) The prosecution then examined a neighbour P.W.No.129 Archana Dilip Bhambare. Witness Archana stated that Anjanabai and the accused with some children were residing in Flat No.5 of her building She was residing in flat No.4 which was in front of flat No.5. The family of the accused had come to reside in flat NO.5 in or about August,1995. Four small children were residing with the accused. She also saw one girl aged about 10 years residing with

the accused. The name of this girl was Kranti. She further stated that during the period of January,1996 she saw one girl aged about 1.1/2 years with the family of the accused. Accused used to call this girl as "Gouri". Gouri was with the accused for about five months. During May,1996, the accused had gone out and had returned back after 4 to 5 days. On their return, the girl Gouri was not found with them and was never seen by this witness thereafter. This witness identified the photograph of Bhawana @ Gouri from amongst the bunch of six photographs in the test identification parade held by P.W.No.130 Special Judicial Magistrate Shivaji Powar on 8.1.1997. She also identified the photograph of Gauri being Exh.37/C. She identified both the accused in the court. Her testimony regarding identifying the photograph of Bhawana @ Gouri before the Special Judicial Magistrate (P.W.No.130) Shivaji Powar was corroborated through the evidence of P.W.No.130 Shivaji Powar as well as the evidence of P.W.No.84 Vasant Sahane who was the panch in respect of the said identification parade. Another neighbour examined by the prosecution was P.W.No.41 Vidya Kulkarni. This witness was residing in flat No.3 of Building No.2 in Nakool Apartments. She stated that while the family of the accused were residing in flat No.5 of building No.2 of Nakool Apartments, on or about the 3rd or 4th of January,1996, she saw one new girl in the house of

Anjanabai. The said girl was called by name Gouri. That, in the month of May 1996, she had seen the accused Anjanabai alongwith four children while going out of the house. They returned after about 3 to 4 days. She noticed that girl by name Gouri was not there. She identified the photograph Exh.37/C from amongst a group of photographs as being a photograph of Gouri. One other photograph Article GG was identified by her as being the photograph of Gouri. According to her the children in the photograph Exh.37/C and Article GG were seen by her alongwith accused. She had further identified the photograph of Gouri from amongst other photographs in the test identification parade held by P.W.No.130 Shivaji Powar. Her evidence in this regard has been corroborated by (PW 130) Shivaji Pawar as well as P.W.No.84 Vasant Shahane who was the panch in respect of the preparation of the memorandum of the parade. In our view the aforesaid evidence which is not seriously disputed by the defence proves the aforesaid circumstances.

(iii) <u>The circumstance of the child Bhawana @ Gouri being last seen together with the accused during their first day of stay at the Pallvai lodge in Kolhapur and child not being seen on the last 4 days of their stay at the lodge.</u>

(iv) It was the prosecution case that in the

2nd week of May,1996 the accused and their family including Kiran came to Kolhapur by S.T. bus. They reached Kolhapur at 5.30 a.m. and from the S.T. Bus stand they went to Pallavi lodge. A cinema theatre by name Usha Theatre is situated near Pallavi lodge. The room was taken in the name of Seema. On the day when they arrived at the said lodge, Gouri raised a hue and cry. Anjanabai then raised a query as to what was to be done of this child. Seema said to her mother "mother kill her". Then, Anjanabai pressed the neck of Gouri and killed her. Anjanabai then asked the accused as to what was to be done with the dead body of Gouri. Seema suggested that they should go to see a picture at Usha theatre and over there they should think of making some arrangement for the disposal of the body. Everybody agreed to this proposal and Renuka then removed the clothes of the dead body of Gouri as they could be used for other children. Renuka then brought one bag and put the dead body of Gouri in the bag and they carried the bag to Usha theatre. After the interval the accused carried the bag containing the dead body of Gouri into the womens latrine and dropped the dead body in the latrine and thereafter the accused Kiran and all of them returned to Pallavi lodge. The family stayed at Pallavi lodge for a period of four days and thereafter they returned to Pune. There Kiran stayed back, while the three ladies and the children

proceeded on to Nasik. This version and the circumstances mentioned herein above are also sought to be proved by the prosecution by examining other independent witnesses who have seen the child Gouri @ Bhawana with the accused Anjanabai and Kiran at Pallavi lodge at the relevant time.

(v) The prosecution has examined (PW 80) Dayanand Godhade. This witness was then the manager of Pallavi lodge at Kolhapur. He stated that on 12.5.1996, in the morning one family consisting of one male, 3 females, 4 small children and one small girl arrived at his lodge at about 6.00 A.M. He identified (PW 1) Kiran as the male and the accused as the 2 females who were in the group. This witness told the family that it would not be possible to accomodate all the persons in one room and he therefore, asked them to take 2 rooms. Kiran (PW 1) agreed to take one room and an extra bed. Seema then made an entry in the register in her name and put her signature thereon. He identified entry no.2441 from the register of the lodge dated 12.5.1996 and the signature of Seema (Exh.38) thereon. He handed over the key of room no.203 and issued instructions to put up one more bed in the room. At about 8.00 P.M. the senior manager of the hotel (PW 83) Ashok Bongarde came to the lodge. When he came to know that so many persons had been accommodated in one room, he asked this witness as

to why two rooms were not provided. Kiran then came to see this witness complaining about the service and therefore, this witness and manager went to room no.203, there they met waiter Arjun who complained that the family was demanding extra hot water. There was also some dis-agreement between Bongarde and the family members about the re-arrangement of the furniture. A quarrel ensued and ultimately after resolving this dispute, this witness and the manager returned to the ground floor. At about 4.00 p.m. the bell attached to room no.203 rang. Waiter Arjun went towards the room. The family ordered tea. Once again the bell attached to room no.203 rang after the supply of tea. The witness had personally gone to that room. The family members were taking tea. The old lady was having a small girl on her lap and was giving tea to the girl. The girl was crying. The witness told Arjun to bring biscuits. Accordingly biscuits were brought and 2 biscuits were given to the girl. Then the girl stopped crying. At about 8.00 p.m. on that day, Kiran with the 2 accused had gone out of the lodge. They returned after an hour. Thereafter again Kiran and the 2 ladies went out of the lodge at about 9.30 p.m. While they were passing by, this witness enquired as to why they were going out of the lodge at such an odd hour. They told him that they were going to see a cinema. Seema was having one big bag with her. The witness enquired as to why they going

with such a big bag to see a cinema, upon which Seema replied that the bag contained the clothes to be delivered to the laundry and therefore, she was carrying the same. They then left the lodge. That thereafter, once again the bell of room no.203 rang. This witness had personally gone to this room. He found that the old lady and 4 children were in the room. The old lady enquired with him whether it was possible to get food. The small girl to whom he had given biscuits was not found in the room. The witness told that old lady that it was not possible to get a full meal but he could give some snacks. The old lady ordered for snacks and the same were brought by this witness. He stated that this family resided in the lodge for 5 days. On the first day, the family consisted of 1 male, 3 females, 4 children and one small girl. On the remaining 4 days the small girl was not found with them. This witness identified the photographs and articles MM2, MM3, Exh.288, Art.GG, Exh.37 as being the photographs of the girl seen by him in the lodge. He stated that he had identified the accused in an identification parade held on 14.12.1996. He had also identified Anjanabai and Kiran in the said identification parade. There is virtually nothing to discard the evidence of this witness in the cross-examination. The fact that he identified the photograph of Gauri in the identification parade held on 14.12.1996 is corroborated by the evidence

of (PW 137) Special Executive Magistrate Bhimrao Patil and further corroborated by the evidence of (Pw 85) Ramrao Magdum, who was a panch who had signed on the memorandum of the parade (Exh.310). The prosecution then examined (Pw 83) Ashok Bongarde. This witness was at the relevant time the main manager of the lodge. He stated that on 12.5.1996 he reported for work at about 8.15 A.M. He checked the register and observed that 4 passengers were accomodated in one room. He enquired from manager Dayanand as to why he accomodated 4 passengers in one room. In the meanwhile, one young male person to whom he identified as Kiran approached him. He raised a grievance regarding the service. This witness enquired from the Waiter as to what was the problem. The problem was pertaining to non supply of extra hot water. This witness instructed that extra hot water should be provided to the family of the accused on payment of extra charges. He and Dayanand came to room no.203. They found that the bed and furniture had been re-arranged. He found 3 ladies in the room. He raised a dispute regarding rearrangement of the furniture. After settling this dispute, he and Dayanand came down on the ground floor. That in the evening at about 7.30 p.m. he again came to the lodge and visited room no.203 with his assistant. They found one old lady alongwith 3 to 4 children. A small girl aged about 1 to 1 & 1/2

years was also there. The girl was crying. Dayanand took the girl to the balcony of the room and thereafter the girl stopped crying. He identified the 2 accused in the court. He identified the photographs of Gauri at MM/2, MM/3, Exh.288, Article GG, Exh.37 in the court. He stated that on 14.12.1996 he had identified the accused Anjanabai and Kiran in a test identification parade amongst several dummies. There is nothing of any substance in the cross-examination of this witness. The evidence of this witness is also corroborated by the evidence of the Special Judicial Magistrate (Pw 137) Bhimrao Patil and by Ramrao (PW 85) who is the panch who has signed the identification parade memo (Exh.312) at which parade this witness had identified the accused and 2 others. In our view, the aforesaid evidence is independent and unshaken and we have no hesitation in accepting this evidence to prove the circumstance as stated aforesaid.

IV). Seen at Usha theatre while carrying the dead body of the child in a rexine bag :-

(i) In order to prove this circumstance, the prosecution firstly examined (PW 86) Appasaheb Avati. On 12.5.1996 this witness was serving as a watchman in Usha theatre. At about 10.00 P.M. he was sitting near the main gate of the theatre. The cinema had already started. It was a practice to

close the gate after about 30 minutes from the starting of the cinema. At about 10.00 P.M. one person alongwith 2 ladies came near the gate. That person told him that they were in need of tickets. He told them that the picture had already started and they will not get the tickets. The male person told him that they will give more amount than the regular charges for tickets. This witness told them that it was not possible to arrange the tickets. The male person then told him to lead him to the booking clerk and that he would sort out the matter with the booking clerk. After some arguments with the booking clerk, he issued 3 tickets to this group. He stated that one of the ladies was carrying a rexine bag. Since no articles were allowed to be carried into the theatre, this witness objected to the taking of the bag. The lady who was carrying the bag told this witness that there was some cash and clothes in the bag and on hearing this witness allowed them to enter in the theatre with that bag. At about 11 to 11.30 P.M. the male member accompanied by the ladies came near the gate. The witness was standing on the main gate. They requested him to open the main gate. The witness asked them as to why they had came back when they had gone into the theatre late after raising such a hue and cry. The male person stated that his wife was suffering a pain in the abdomen and therefore, they wanted to leave the theatre. This witness

opened the door and all of them left the theatre. In his evidence in the court this witness identified the male member who had come to see the picture as Kiran. He identified the 2 accused as the 2 ladies who had accompanied Kiran. That on 14.12.1996 he had identified the accused and Kiran in an identification parade. The evidence of this witness relating to his identification of the accused at an identification parade was corroborated by the evidence of (PW 137) Bhimrao Patil, Special Judicial Magistrate, who was the magistrate who held the identification parade and (PW 85) Ramrao Magdum who was the panch in respect of the identification parade and who had signed the memorandum (Exh.110). The prosecution then examined (PW 81) Madhukar Gore, who at the relevant time was serving as a booking clerk in the theatre. He stated that on 12.5.1996 the main picture had started at 9.30 p.m. At about 9.40 p.m. he stopped the issue of tickets. When he was completing the making of the accounts, one person appearing like a wrestler came near him. He was 6 feet in height. 2 ladies were with him. One lady was with a bob-cut aged about 20 years and the other was 25 to 30 years old. The watchman of the theatre, Avati, was with them. The male person asked for tickets, the 2 ladies also stated that they wanted to see the picture. To avoid a dispute, he gave them 3 tickets of the balcony. He then completed the accounts and went home. He identified

the 2 accused and Kiran in the court as the persons who were the members of the group who had came to the theatre. This witness stated that on 14.12.1996 he had identified the accused and Kiran from amongst several dummies. The evidence of this witness relating to the identification of the accused and Kiran in a test identification parade held on 14.12.1996 is corroborated by the evidence of (PW 137) Special Judicial Magistrate Bhimrao Patil who confirms that such identification was made and the evidence of (PW 85) Ramrao Magdum who was the panch in respect of the holding of the said identification parade on 14.12.1996 and the identification of the accused by this witness therein. It is further corroborated by (Exh.310) which is the test identification parade memo. On considering this evidence, we have no hesitation in holding that the same is independent testimony which is not shaken in any way in the cross-examination and that the same proves the aforesaid circumstance.

V) Finding of a dead body of Gauri @ Bhavana on 13.5.1996 in the ladies toilet of the theatre :-

. This circumstance is proved by the prosecution by examining (PW 78) Rohit Shaha, who was at the relevant time, a partner of Usha theatre. This witness stated that on 13.5.1996 he was standing near the cycle stand. One Mukesh from the first

floor gave a call saying that the dead body of a child was found lying on the steps of the female latrine at the level of balcony. This witness proceeded to the spot and found a dead body of a small girl lying there. He immediately phoned up the Shahupuri police station. He was directed by the police officer to come to the police station for recording his statement. This witness then went to the police station and lodged a complaint. He verified the contents of the complaint (Exh.281). He identified (Exh.288) being a photograph of the dead body of Gauri to be the photograph of the dead body seen by him. The prosecution then examined (PW 73) Raghunath Chougule, who was the head constable attached to the Shahupuri police station. He proved the entry at Serial no.19 at the station diary dated 13.5.96 which he had effected in the diary. He had effected this entry on receiving the telephonic call at about 11.15 A.M. on 13.5.1996 regarding the finding of the dead body. The entry was exhibited as (Exh.280). He then sent head constable Vibhute to proceed to the spot where the dead body of the child was found. Then at 11.35 A.M. Rohit Shah personally came to the police station and lodged a complaint (Exh.281). Thereafter he handed over the matter to head constable Vibhute for further investigation. The prosecution further examined (PW 74) Umesh Satpute who was the inquest panch relating to finding of the deady body of Gauri. He has

proved the inquest panchanama (Exh.283). He had stated that apart from the dead body of the child one piece of saree was attached from the spot near the dead body. He proved the panchanama relating to the attachment of the saree piece (Exh.284) and the said piece of saree was produced at the trial.

(iv) It must be stated here that (PW 1) Kiran in his evidence identified this piece of saree as a piece from a saree which he had purchased for Renuka. The prosecution then examined (PW 75) Subhash Vibhute who was a police head constable who had prepared and signed the inquest and the spot panchanamas and he confirmed the contents of the panchanamas. The prosecution further examined (PW 76) Bhausaheb Patil who was the photographer who had taken the photograph of the dead body after A.D.No.46/96 was registered by the Shahupuri police station. He produced his photograph register and the entry therein. He identified article MM1 as the photograph of the dead body of the child. The said photograph was exhibited at Exh.288/1, its negative being at Exh.288/2. The prosecution lastly examined (PW 97) Navnath Kamble who was a panch witness regarding the attachment of one photograph produced by PSI Waghmare, and he procured the said panchanama (Exh.253). We have no hesitation in accepting the aforesaid evidence which is of independent witnesses and is unshaken in the cross-examination. The

criticism of the defence was that the bag in which the child had been carried was not found. The further criticism that was it was unnatural for the accused to leave behind the piece of saree for convenient identification. We find no substance in these submissions. It is quite possible that the piece of saree must have been used to hide the contents of the bag. It also possible that the bag would have been folded and carried out. There is absolutely nothing in the cross-examination of these independent witnesses to cast any doubt as regards their version. We hold that the aforesaid circumstance must therefore, be held to be proved.

VI) <u>The finding of injuries on the dead body of Bhavana @ Gauri</u> :-

(i) This circumstance was proved by the prosecution through the evidence of (PW 135) Dr.Ashwini Sadolikar. This witness was the doctor attached to CPR hospital. She stated that on 13.5.1996 a dead body of a female child was referred to the hospital by Shahupuri police station for conducting a post mortem. She concluded that there was swelling over the lung (pulmonary odema). She found that both the lungs were congested. She opined that this condition can be caused by obstruction to the respiratory tract. In her cross-examination, she admitted that pulmonary odema was possible in the

cases of drowning or poisoning. She denied that in every case there should exist external marks relating to the pressing of the neck. She opined that the age of the child was about 1 & 1/2 to 2 years. In our view, the prosecution has proved that the child died an unnatural and homicidal death.

. As an over all conclusion, we have no hesitation in holding that the prosecution has proved the kidnapping, murder and attempt of concealing evidence of the crime, being the dead body of the child Bhavana @ Gauri. In our view, the accused would be liable to be convicted under Sections 363 & 365 r/w section 34 of the IPC for the kidnapping of Bhavana @ Gauri, under Section 302 r/w 34 regarding murder of Bhavana @ Gauri and under Section 201 r/w 34 of IPC relating to concealing the dead body of the child Bhavana @ Gauri.

18. **As regards the incident relating to Pankaj,** the circumstantial and other evidence relating to the incident is as follows :-

(i) Lodging of a missing complaint by (PW 4) Suhas Mahamulkar, the father of the child :-

. It was the prosecution case that Pankaj was kidnapped by the accused from near Vithal mandir in

the area of Wadala in the last week of July-1996. Two young ladies were standing in the shop near the said mandir purchasing a purse. One boy aged about 3 to 3 & 1/2 years was standing behind their legs. The ladies were not attentive towards the child. On seeing this situation, Seema picked up that child. While she was running away with this child, the child raised an alarm by saying "Mammi Mammi". Kiran & Renuka then rushed towards Seema. Seema put her palm on the mouth of the child. Then by bus, they came to the spot where Anjanabai was waiting. The boy was stating his name as Pankaj. When the boy started crying for his mother, Anjanabai gave 2 slaps to him and Seema also gave a fist blow on his back. The boy was frightened and after some time went to sleep. Pankaj was then brought by the accused to the house of Indirabai Mahimkar at Shiv-shahi apartment, Kothrud, Pune, where they were residing. The aforesaid circumstance is proved by the prosecution through the evidence of (PW 2) Sharmila who is the mother of the child. She stated in her evidence that on 27.7.1996 it was a day of Ashadi Ekadashi. She alongwith her friend Pushpanjali and Pankaj had gone to the temple of Vithal at Wadala. They took darshan of Vithal. They came near the shop selling purses situated in the area of fair of that temple. Pankaj was left on the ground. While they were purchasing a purse and during the span of 5 minutes that it took the

transaction to be completed, Pankaj was lost. She and her friend searched Pankaj till 9.30 P.M. but could not trace him. Her husband, persons in the chawl and her mother-in-law came to the spot to search for Pankaj. Till the next morning the search yielded no fruit and ultimately her husband informed this incident to the Matunga police station. This witness gave the description of the clothes which were on Pankaj's body. She identified articles 40 & 41 as the clothes of her son. These were the articles seized by the police from the dead body of the child Pankaj which was subsequently found. These clothes were also identified by her in a test identification parade in respect of the 2 accused which was conducted on 31.10.1996 by (PW 130) Shivaji Powar. She identified the photographs of her son at Exh.74/1 to 74/8 (Articles Q-1 to Q-8). She identified the photograph of Pankaj (Exh.56) which has been given by her husband to the police. The prosecution then examined (PW 4) Suhas Mahamulkar, the father of Pankaj. He stated that on 27.6.1996 at about 10.30 p.m. he came to know from the persons of the chawl about the missing of his child. He found the house locked as all the members had gone for the search of his child. He met his wife and her friend Pushpanjali early in the morning at 2.30 to 3.00 A.M. He gave a missing report in Matunga police station. He identified his signature on the missing report. He stated that at the time

of incident, the child was wearing a "T" shirt of white colour. He identified clothes, articles-40 & 41, as being the clothes of his child. He had identified these clothes in the test identificatin parade held by (PW 130) Shivaji Powar, the Special Judicial Magistrate at the Govt.Rest house at Nashik on 31.10.1996. He identified the photograph at Exh.68-A (Article-H) which was given by him to the police on 28.11.1996 as being the photograph of his child. He produced the negative of this photograph. The photograph was exhibited as Exh.68-A, the negative being Exh.68-C. The evidence relating to identification of clothes found from the body of the deceased Pankaj after his body was recovered in the identification parade dated 31.10.1996 was also corroborated by the evidence of (PW 130) Shivaji Powar. This witness is testified to the holding of identification parade at Tapovan Guest House. He has testified to the witnesses (PW 2) Sharmila Mahamulkar and (PW 4) Suhas Mahamulkar identifying the clothes of this child from among 4 other half pant and T-shirts arranged on the table. As regards this identification parade pertaining to the clothes, the panch witness who has signed the panchanama relating to the memorandum of the parade conducted by (PW 130) Shivaji Powar has also been examined by the prosecution. This witness is (PW 15) Shivdas Deshmukh. He also talks about the identification of the clothes found on the body of

Pankaj by Sharmila (PW 2) and Suhas (PW 4). He states that after the identification the clothes were sealed with a slip bearing the signature of the panchas. He proved the panchanama (Exh.105) of the parade to be true and correct. From the aforesaid evidence which is independent and unshaken in the cross-examination, we have no hesitation in holding that the aforesaid circumstance has been proved.

(ii) The circumstance of the accused being seen together with Pankaj at Shiv-shahi apartment and later Pankaj not being seen at this place after September-1995 :-

. The prosecution has sought to prove this circumstance through the evidence of (PW 5) Nita Shaha. This witness was a resident of block no.4 on the first floor of Shiv-shahi apartment at Kothrud, Pune. She was staying on the same floor where Anjanabai was residing alongwith the accused. She identified the accused in the court as being her neighbours. She stated that the 4 children of Renuka by name Ashish, Kishor, Gauri and Tushar were known to her. She also knew Kiran as the husband of Renuka. The family of the accused had come to reside in the block in July-1996. Kiran had come 2 days later. That after about 15 to 20 days, she saw a new child with the family. This child was aged about 2 & 1/2 to 3 years, fair looking and was a

slim boy. Anjanabai told her that he was the grand-son of her sister residing at Bombay. The name of this new child was Pankaj. This witness herself had a daughter Ashwini aged about 3 years and son Nikhil who was then aged about 8 years. The children from the house of Anjanabai used to come to her house. She had once given a chocolate and bubblegum to Pankaj. He therefore, started coming every day to play with her children. Pankaj started telling her that there was a telephone in his house at Bombay and they also had a car. Pankaj used to speak marathi and she saw this child with them for a period of 2 to 2 & 1/2 months. Thereafter Pankaj was not seen by her. This witness therefore, asked Anjanabai as to where Pankaj had gone and was told that he had been sent back to his mother in Bombay. In the court this witness identified the photograph of Pankaj (Exh.68-A) from amongst 8 to 9 other photographs. She stated that on 16.1.1997 she had identified the photograph of Pankaj in an identification parade alongwith certain other witnesses. She identified the photographs (articles Q/1 to Q/8) as being the photographs of Pankaj. The prosecution then examined (PW 6) Sangita Thakkar who was another neighbour of the family of the accused at Shiv-shahi apartment Kothrud, Pune. This witness stated that she was residing on the first floor at Shiv-shahi apartment. Her immediate neighbour was Mahimkar and the flat next to Mahimkar belonged to

Anjanabai. Her family consisted of herself, her husband and her 2 children. Her son Omkar was aged about 9 years and her daughter Manjiri was aged about 7 years. She stated that Anjanabai, Seema and Renuka were known to her. She identified Seema and Renuka in the court. She further identified Kiran as being the person known to her as the husband of Renuka. That in or about July-1996 the family of Anjanabai came to reside in the flat. The family consisted of Anjanabai, Renuka, Seema, 4 children and Kiran. After about 20 to 25 days, she saw a new boy with them named Pankaj. She enquired Anjanabai about this boy and was told that he was a grand-son of her daughter who was from Bombay. She also told this witness that the father of this child was serving in Bombay. She disclosed that the name of the child was Pankaj. That this child was aged about 3 to 3 & 1/2 years and used to come to the house of this witness. He used to tell her that his father used to give him cadbury choclate. She saw the child for 1 to 1 & 1/2 months and thereafter did not see the child. She asked Renuka as to where Pankaj had gone, and was told that he had been sent to his mother at Bombay. This witness identified the photograph of this child in the court (Exh.68-A). She also identified Pankaj from the photograph (Exh.56). She further identified photographs of Pankaj (Exh.74/1 to 74/8) i.e articles Q-1 to Q-8. She stated that she had

identified the photograph of the child (Exh.68-A) in the identification parade held by a Magistrate on 16.1.1997. She had identified this photograph from amongst 8 to 10 photographs of various children which were kept on the table. The evidence of this witness has been corroborated by the prosecution through the evidence of (PW 128) Ulhas Korne who talks about the identification of the photographs by these witnesses at the test identification parade held by him. He has stated that the photograph which was identified by the witnesses was the one at (Exh.68/A). He and the panchas had put their signature on the back of these photographs. There is nothing in the cross-examination of the Special Judicial Magistrate which can cast any doubt on his version relating to the identification of photographs. This evidence relating to identification is also corroborated to the evidence of the panch who has signed the identification memo. The said panch is (PW 18) Shailesh Chavan. He also speaks about the identification of the photograph of Pankaj (Exh.68/B) by several witnesses including (PW 5) Nita Shaha and (PW 6) Sangita Thakkar. In our view, the aforesaid evidence proves the aforesaid circumstance.

(iii) Finding of the dead body of Pankaj on 11.9.1996 near the compound of Maharshi Karve Shikshan Sanstha :-

. This circumstance is proved by the prosecution through the evidence of (PW 8) Fransis Johan Aadhav. This witness was serving as an API at the Alankar Police chowky attached to Kothrud police station on 11.9.1996. On the said date at about 11.30 A.M. one Shivanand Sontakke informed him on the telephone that something was lying near the telephone pole in the area of Home colony in a cement bag. This witness sent Police head constable Koli and Police head constable Zinzurde to make an enquiry. They went to the spot and after making enquiry they informed this witness that there was a dead body of a child aged about 3 to 4 years in a cement bag. This witness then went to the area and in the presence of 2 panchas opened the bag and ascertained that it was indeed a dead body of the male child aged about 3 to 4 years. He noticed injuries on the person of the body near the face, nose, cheek and private part. In fact, he noticed injuries on the entire body of the child. He prepared a panchanama of the spot of the offence. He attached one ladies handkerchief from the spot. He further attached the clothes of the dead body and a string on the body under the said panchanama (articles 37, 38 & 39 respectively). He proved the contents of the said panchanama (Exh.77). The body of this child was carried by this witness to Sasoon hospital and there this witness prepared an inquest panchanama

(Exh.78). The dead body was handed over for post mortem and an advance death certificate was obtained which indicated that the death was due to shock and injuries. This witness then lodged a FIR at the Kothrud police station (Exh.79) and in pursuance of this FIR, Kothrud police station registered C.R.No.306/96 for the offence under Section 302 of IPC. This witness then called a police photographer and the photographs (Exhs.74-1 to 74-8 (articles Q-1 to Q-8) were taken by the said photographer at the spot where the dead body was lying. In the court this witness identified the clothes articles-37 and 38 seized from the dead body of the child as well as the string article-39 found on the body of the child. There is nothing in the cross-examination of this witness which can cast a doubt about the testimony of this witness relating to finding of the dead body of the child. The prosecution further examined (PW 7) Kailas Udaji Tirmane who was a police photographer. This witness stated that on 11.9.1996 at about 1.30 P.M. he received a call from (PW 8) API Aadhav attached to Alankar police chowky and was told that the photographs of the dead body were to be taken in the area of Home colony at Karve Nagar. This witness reached the spot at 2.30 p.m. and saw the dead body of a child aged about 3 to 4 years. He took 8 photographs of the dead body from different angles. The positives were prepared by him in the lab. He later handed over these

photographs and negatives to PI Chougale of Kothrud Police station. He identified these photographs as articles-Q-1 to Q-8 and the same were exhibited as Exhs.74-1 to 74-8 and the negatives were exhibited as (Exh.75). Lastly the prosecution examined (PW 134) PI Vishwas Chougule. PI Chougule was attached to the Kothrud police station on 11.9.1996. He stated that on the said day, he took over the investigation of C.R.No.309/96 from API Aadhav. For 2 months thereafter the case was with him for investigation but he could not trace any accused and therefore, he transferred the matter to CID crime for further investigation. The above evidence clearly proves the aforesaid circumstance.

(iv) The finding of injuries on the dead body of Pankaj :-

. This circumstance was sought to be proved by the prosecution by examining (PW 138) Dr.Milind Kamble, who had performed the post mortem on the dead body of Pankaj. The prosecution also proved through this Doctor the post mortem notes (Exh.33) which corroborated his evidence. The doctor stated that at the time of conducting the post mortem examination, he found the following external and internal injuries on the child :-

. External injuries :-

1) Incised wound on left ear, at upper end measuring 1/2 x 1/4" margins cleancut.

2) Two linear abrasions 1" above middle of left eyebrow parallel to each other, Measuring 1/2" long each, separated by distance of 1/2" from each other.

3) Abrasion 1/4" above lateral angle of left eyebrow, measuring 1/2" x 1/3".

4) Linear abrasion on middle of left eye 1/4" above eyebrow, measuring 1" x 1/3".

5) Incised wound, 1/4" below medial angle of left eye 1/2" long bone deep, Margins cleancut.

6) Two abrasions, 1/2" below lateral angle of left eye" measuring 1/2" x 1/4" each, parallel to each other and separated by a distance of 1/4".

7) Abrasion 1/2" below injury No.6 measuring 1/2 x 1/3".

8) Verticle linear abrasion, 1" below injury No.7, 1" long.

9) Right black eye.

10) Three crescentric abrasion on right cheek 1" away from angle of mouth, one below another 1/4" long, surrounding area of 2’ x 1" contused.

11) Linear abrasions on right cheek, 1 1/2" long.

12) Contused abrasions upper lip, against incisors. Abrasion measuring 1 1/2" x 1/2", Surrounding area of 1/2" diameter contused.

13) Contused abrasion on lower lip against incisors Abrasion measuring 1 1/4" x 1/2" Surrounding area of 1/2" diameter contused.

14) Contused abrasion on inner aspect of upper lip, against left incisors extending over inner aspect of left cheek, abrasion measuring 1 1/2 x 1/2" surrounding area of 1" diameter contused.

15) Crescentric abrasion 1" away from left angle of mouth, 1/3" long. Surrounding area of 1/2" diameter contused.

16) Contused abrasion on tip of nose. Abrasion measuring 1/2" x 1/4" Surrounding area of 1 1/2" contused.

17) Linear abrasion on front of neck, in the middle,

1" below level of thyroid cartilace, measuring 2" long.

18) Two crescentric abrasions 1/2" above the thyroid cartilace, 1/4" long each separated by a distance of 1/3" from each other. Surrounding area of 3/4" contused.

19) Contusion of left shoulder extending upto elbow joint, anteriourly, measuring 7" x 2 1/2", with fracture of lower third of humerous.

20) Multiple abrasions on middle of left area, size varying from 1/4 x 1/4" to 1/2" x 1/4" distributed in area of 2" x 1 1/2" on anteromedial aspect.

21) Abrasions on left forearm, anteromedically, measuring 3 1/2" x 1 1/2".

22) Contusion on lateral aspect of right arm, in the middle measuring 3 1/2" x 1 1/2".

23) Multiple abrasions on whole of right forearm size varying from 1/4" x 1/4" to 3/4 x 1/4".

24) Linear abrasion on left side of chest 1" lateral to nipple 1/2" long.

25) Abrasion on right side of chest, 1" away from midline, in 6th intercostal space, measuring 1/2" x 1/4".

26) Abrasion over xiphisternum, measuring 1/2" x 1/4".

27) Multiple abrasion on whole of the abdomen, size varying from 1/4" x 1/4" to 1" x 1/4".

28) Incised wound on base of penis, on anterior aspect measuring 1" x 1/4" muscle deep Margins cleancut.

29) Linear verticle abrasion on anterior aspect of scrotum in the middle measuring 2 1/2" long.

30) Linear abrasion on posterior aspect of right thigh 1 1/2" away from natal cleft, 1" long.

31) Two linear abrasions, parallel to each other medical aspect of right thigh measuring 3" x 1 1/2" long separated by a distance of 1/2" from each other.

32) Multiple abrasions on right leg, size, varying from 1/4 x 1/4" to 1 x 1/2" distributed all over leg, alongwith contusion.

33) Laceration of anal sphinctor, at 12 ‘O’ clock position, 1 x 1/4" muscle deep.

34) Contusion of both buttocks, measuring 4 x 3" on right and 3 1/2 x 3" on left buttock.

35) Multiple linear abrasions on whole of back, at various sites, size varying from 1" to 3" in length.

36) Linear abrasion on medical aspect of left thigh 2" long.

37) Linear abrasion 1" long, 1 1/2" late 1 to injury No.36.

38) Abrasion on left knee, measuring 1 x 1/2".

39) Multiple abrasion on left leg, size varying from 1/4 x 1/4" to 3/4 x 1/4".

40) Contusion of both thighs, upto knee, involving whole circumference.

41) Contusion of left ankle joint, measuring 2 x 1", on anteromedical aspect.

42) Contusion of right ankle joint, measuring 1 1/2 x 1" on anteromedical aspect.

. INTERNAL INJURIES :-

1) Hematoma under scalp, on frontal and both parietal and occipital region, measuring 5 x 2".

2) Subarachnoid haemorrhage on right parietal lobe measuring 1 x 3/4" Injury No.1 and 2 correspond to external injuries 2 to 9.

3) Peritreacheal hematoma, measuring 2 x 1" corrosponding to external injury No.17 and 18.

. He opined that injury nos.10 to 16 were sufficient to cause death in an ordinary course. He opined that on observing the aforesaid injuries the death of the child was due to asphyxia as a result of smothering associated with the other injuries.

In

his cross-examination, he stated that he had mentioned the cause of death as due to smothering on the basis of injury nos.10 to 16. He categorically stated that this was not a case of throttling but a case of smothering. In our view, the medical evidence consisting of the evidence of said Doctor and the post mortem notes conclusively prove the aforesaid circumstance.

(v) The identification of the clothes found on the dead body on 11.9.1996 by the parents of Pankaj :-

. In so far as this circumstance is concerned, we have already discussed the evidence of the parents of Pankaj. The prosecution has examined (PW 4) Suhas Mahamulkar, the father of the child and Sharmila Mahamulkar (PW 2) mother of the child. As stated earlier they had identified in court the clothes found on the dead body of the child (articles-38 & 39) as being the clothes of their son Pankaj. Apart from identifying these clothes as belonging to their son in court, these witnesses had also identified the clothes from amongst the other clothes in an identification parade held on 31.10.1996 by Special Judicial Magistrate (PW 130) Shivaji Powar. This identification had been proved by examining (PW 130) Shivaji Powar and also by producing the test identification parade memo. The aforesaid evidence has also earlier been discussed

by us. In our view, the same is independent evidence which remains unchallenged by the defence. We accept this evidence to prove the aforesaid circumstance.

. In conclusion, we must say that though we have not found the version given by (PW 1) Kiran regarding the manner in which Pankaj was actually killed to be the whole truth for the reason that there are some omissions in his statement as also because it does not explain the 3 incised wounds with clean margins found on the dead body. Even by dis-carding this evidence, we feel that there are sufficient proved circumstances which together complete the chain of circumstances and link the accused in the kidnapping, murder and the disposing off the dead body of Pankaj. We must say here that in so far as the version given by (PW 1) Kiran relating to kidnapping and disposing off the dead body, the same stands corroborated by the other evidence pertaining to lodging of the missing report and finding of actual dead body of Pankaj which has been referred to here-in-above. To that extent, the evidence of (PW 1) Kiran can be accepted. Taking on over all view in respect of the incident pertaining to the child Pankaj, the accused would be liable to be convicted under Sections 363 & 365 r/w section 34 of IPC for the offence pertaining to kidnapping and under Section 302 r/w 34 of IPC in respect to the

murder of Pankaj and under Section 201 r/w 34 of IPC in respect of concealing the evidence of murder being the dead body of the child Pankaj.

19. Before we proceed further to deal with the sentences to be imposed, we wish to make a few observations in the manner in which the investigation and prosecution has been conducted. In the present case we have observed that the investigation of the case spread across several towns in Maharashtra & Gujarat. Not-with-standing a long lapse of time between the incidents and the commencement of the investigation, the investigation was found by us to be quite meticulous. Great pains have been taken by the Investigating officers to bring on record various incriminating circumstances in respect of incidents pertaining to each of the

children. It appears to us that the circumstantial evidence collected during the investigation were in themselves sufficient to secure a conviction of the offenders. That (PW 1) Kiran was also in the thick of action in each of these incidents of kidnapping, murder and disposal of the dead bodies. In such a case, it was eminently desirable that the grant of pardon was approved by the prosecution only after a very careful consideration as to whether the material gathered in the course of the investigation was sufficient to secure a conviction without

granting pardon to an accused. The principle on which the Legislature introduced provisions in the Cr.P.C. permitting a grant of pardon is that a culpable person should not be allowed to escape punishment for want of evidence sufficient to secure conviction. It is for securing such larger justice that the prosecution is empowered to consent to the grant of pardon to an accomplice and the Court is empowered to pass the order granting such pardon subject to conditions as laid down in Section 307 & 308 of the Cr.P.C. In **Jasbir Singh V/s. Vipin Kumar Jaggi reported in (2001) 8 SCC 289** the Apex court had occasion to consider the object sought to be achieved by Section 307 of Cr.P.C. and the role of the Prosecutor. The Apex court also compared the role of the Prosecutor while acting under Section 307 of Cr.P.C. and his role while acting under Section 321 of Cr.P.C. for withdrawing from a prosecution.

19. As regards the object sought to be achieved by Section 307 of Cr.P.C., the Apex court observed as under :-

. " Although the power to actually grant the pardon is vested in the court, obviously the court can have no interest whatsoever in the outcome nor can it decide for the prosecution whether particular evidence is required or not to ensure the conviction of the accused. That is the prosecution’s job."

. While making the aforesaid observation, the Apex court relied upon the observations of an earlier

decision of the said court in the case of **Lt.Commander Pascal Fernandes V/s. State of Maharashtra** reported in AIR 1968 SC 594, in which case the Apex court had made the following observations :-

. "Ordinarily it is for the prosecution to ask that a particular accused, out of several, may be tendered pardon. But even where the accused directly applies to the Special Judges he must first refer the request to the prosecuting agency... The proper course for the Special Judge is to ask for a statement from the prosecution on the request of the prisoner. If the prosecution thinks that the tender of pardon will be in the interests of a succesful prosecution of the other offenders whose conviction is not easy without the approver's testimony, it will indubitably agree to the tendering of pardon. The Special Judge (or the Magistrate) must not take on himself the task of determining the propriety of tendering pardon in the circumstances of the case."

. From the aforesaid observations of the Apex court, it is clear that the power to grant pardon, though vested in the court, is a power to be exercised on behalf of the prosecuting agency and it can only be exercised when either the prosecution makes such a request or joins such a request. The question of considering whether a pardon ought to be asked for is the prosecution job. It is also the principal job of the prosecution to secure justice and to ensure that a guilty offender whose testimony is not absolutely essential is not let off and he is brought to book. The burden of determining as to whether the testimony of an approver is absolutely necessary is also thus cast upon the prosecution.

We wish to make it absolutely clear that the prosecution cannot perform this duty lightly, without bearing in mind that while letting of an offender, whose evidence may not be necessary to secure a conviction, the cause of justice is defeated. If there is a good possibility of all the offenders being brought to justice without granting pardon then the prosecution should be slow in moving for grant of pardon or joining a request for grant of pardon. The application made by the prosecution for grant of pardon or its say while joining in an application by the accused for grant of pardon must indicate application of mind and in any case should not be for extraneous reason. For example if the material gathered by the investigating agency indicates a good possibility of securing a conviction of all accused without the grant of pardon, the prosecution cannot seek pardon merely to increase its chances of securing a conviction or for doubly making sure that the conviction is secured.

20. That brings us to the question of sentence and as to whether death penalty imposed by the trial court should be confirmed.

21. The question as to whether the circumstances in which death penalty should be imposed has been a subject matter of several decisions of the Apex court. Under Section 354(3) of the Code of Criminal Procedure 1973, special reasons are required to be

recorded in case the sentence of death is awarded to a convict. The Constitutional challenge to the death penalty and the procedure for award of the death penalty as provided for under Section 354(3) of the Code of Criminal Procedure, 1973 was dealt with by the Apex court in a case of **Bachan Singh V/s. State of Punjab** reported in (1980) 2 Supreme Court Cases 684. The death penalty imposable under Section 302 of Indian Penal Code and Section 354(3) of the Code of Criminal Procedure 1973 were both held to be constitutional and not violative of articles-14, 19 and 21 of the Constitution of India. While doing so, the Apex court negated the argument that Section 354(3) of the Code of Criminal Procedure, 1973 invested the Court with unguided discretion in imposing a death penalty. Without being exhaustive, the Apex court indicated the standards and norms for restricting the area of imposition of a death penalty. In the said case, a Counsel appearing in the case suggested four aggravating circumstances in which the penalty of death could be imposed by a Court in its discretion. The aggravating circumstances suggested by the Counsel are reproduced in paragraph-202 of the Judgment. Counsel further suggested seven mitigating circumstances which were reproduced by the Court in paragraph-206 of the Judgment. The aggravating and mitigating circumstances suggested by Counsel were found by the Court to be relevant

and worthy of acceptance. In so far as the aggravating circumstances were concerned, the Court observed that it would prefer not to fetter judicial discretion in attempting to make an exhaustive enumeration one way or the other. Even while considering the mitigating circumstances, the Court observed that it would not feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society. It was further observed that nonetheless, it could not be over-emphasised that the scope and concept of mitigating circumstances in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). The Judges should never be bloodthirsty. The hanging of murderers had never been too good for them. It went on to observe that a real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option was unquestionably foreclosed.

. Then again in the case of **State of Rajasthan V. Kheraj Ram** reported in (2003) 8 SCC 224, the following observations in relation to the imposition of death penalty were made :-

. Section 302 IPC prescribes death or life imprisonment as the penalty for murder. While doing so, the Code instructs the court as to its application. The changes which the Code has undergone in the last three decades clearly indicate that Parliament is taking note of contemporary criminological thought and movement. It is not difficult to discern that in the Code, there is a definite swing towards life imprisonment. Death sentence is ordinarily ruled out and can only be imposed for "special reasons", as provided in Section 354(3). There is another provision in the Code which also uses the significant expression "special reason". It is Section 361. Section 360 of the 1973 Code re-enacts, in substance, Section 562 of the Criminal Procedure Code, 1898 (in short "the old Code"). Section 361 which is a new provision in the code makes it mandatory for the court to record "special reasons" for not applying the provisions of Section 360. Section 361 thus casts a duty upon the court to apply the provisions of Section 360 wherever it is possible to do so and to state "special reasons" if it does not do so. In the context of Section 360, the "special reasons" contemplated by Section 361 must be such as to compel the court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed. This is some indication by the legislature that reformation and rehabilitation of offenders and not mere deterrence, are now among the foremost objects of the administration of criminal justice in our country. Section 361 and Section 354(3) have both entered the statute-book at the same time and they are part of the emerging picture of acceptance by the legislature of the new trends in criminology. It would not, therefore, be wrong to assume that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors. Criminal justice deals with complex human problems and diverse human beings. A

> Judge has to balance the personality of the offender with the circumstances, situations and the reactions and choose the appropriate sentence to be imposed." .

22. Over the years, the list of aggravating and mitigating circumstances while deciding the question as to whether death penalty should be imposed has expanded and become more comprehensive. Though there are sometimes similarities in the expressions used in different Judgments, it may be worthwhile to list both the "aggravating circumstances" and "mitigating circumstances" as laid down by the Apex court in some of its Judgments dealing with the issue.

(I) Aggravating circumstances :-

a) If the murder has been committed after previous planning and involves extreme brutality. (See: **Bachan Singh V. State of Punjab** (1980) 2 SCC 684).

b) If the murder involves exceptional depravity. (See: **Bachan Singh V. State of Punjab** (1980) 2 SCC 684).

c) If the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed while such member or public servant was on duty or in consequence of anything done or attempted to be

done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant. (See: **Bachan Singh V. State of Punjab** (1980) 2 SCC 684).

d) If the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a magistrate or a police officer demanding his aid or requiring his assistance under Section 37 or Section 129 of the Criminal Procedure Code, 1973. (See: **Bachan Singh V. State of Punjab** (1980) 2 SCC 684).

e) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. (See : **Machhi Singh** 1983 (3) SCC 470 followed in **Lehna V. State of Haryana** (2002) 3 SCC 76).

f) When the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or some similar reason other than a personal reason. (See : **Machhi Singh V. State of Punjab** (1983) 3 SCC 470 approved in **State V. Nalini**

(1999 (5) SCC 253).

g) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust ; or murder is committed in the course of betrayal of the motherland. (See: **Macchi singh** 1983 (3) SCC 470 followed in **Lehna V. State of Haryana** (2002) 3 SCC 76).

h) When murder of the member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of ‘bride burning’ or ‘dowry deaths’ or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation. (See : **Macchi Singh** 1983 (3) SCC 470 followed in **Lehna V. State of Haryana** (2002) 3 SCC 76).

i) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed. (See : **Macchi Singh** 1983(3) SCC 470 followed in **Lehna V. State of**

Haryana (2002) 3 SCC 76).

j) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-a-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community. (See : **Macchi Singh** 1983 (3) SCC 470 followed in **Lehna V. State of Haryana** (2002) 3 SCC 76).

k) If it is an organised crime involving mass murder of innocent people (See: **State of M.P. V/s. Ghanshyam Singh** (2003) 8 SCC 13).

l) If while committing murder the accused acted in a most cruel manner and the murder was committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner (See: **State of Rajasthan V. Kheraj Ram** (2003) 8 SCC 224).

m) That the incident related to the kidnapping and killing of young children for gain (See: **Mohan & others V/s. State of TN** 1998(5) SCC 336 and **Sevaka Perumal V/s. State of TN** AIR 1991 SC 1463).

(II) Mitigating circumstances :-

a) That the offence was committed under the influence of extreme mental or emotional

disturbance. (See : **Bachan Singh V. State of Punjab** (1980) 2 SCC 684).

b) That the accused is very young or very old. (See: **Bachan Singh V. State of Punjab** (1980) 2 SCC 684).

c) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society. (See: **Bachan Singh V. State of Punjab** (1980) 2 SCC 684).

d) The probability that the accused can be reformed and rehabilitated. (See: **Bachan Singh V. State of Punjab** (1980) 2 SCC 684).

e) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence. (See: **Bachan Singh V. State of Punjab** (1980) 2 SCC 684).

f) That the accused acted under the duress or domination of another person. (See: **Bachan Singh V.State of Punjab** (1980) 2 SCC 684).

g) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct. (See: **Bachan Singh V. State of**

Punjab (1980) 2 SCC 684).

h) That the accused is a woman, that she is a mother of a small girl, that accused is very young, that the accused has regretted the act and that the participation was as a result of indoctrination or the accused did not play any major role. (See: **State V. Nalini** 1999(5) SCC 253).

i) That the evidence does not disclose the immediate cause of the incident (See: **Ram Anup Singh V. State of Bihar** (2002) 6 SCC 686).

j) That there is nothing to suggest that the accused will repeat such barbarism in the future so that they would constitute a continuing threat to the society. (See: **Ram Anup Singh V. State of Bihar** (2002) 6 SCC 686).

k) There was no reason to believe that the accused could not be reformed or rehabilitated and he was likely to continue his criminal acts of violence as would constitute a continuing threat to the society. (See: **Prakash Dhawal Khairnar (Patil) V. State of Maharashtra** (2002) 2 SCC 35 as follows in **Ram Anup Singh V. State of Bihar** reported in (2002) 6 SCC 686).

l) That the facts of the case indicated that the accused was not a leader of the gang but was to be considered to be one amongst the other accused who took part in the incident. (See: **Ram Pal V. State of U.P.** (2003) 7 SCC 141).

m) That the accused has spent a very long time in custody after the incident in question has occurred. (See: **Ram Pal V. State of U.P.** (2003) 7 SCC 141).

n) That the role played by the accused is similar to the role played by other accused who have been given lesser sentence. (See: **Ram Pal V. State of U.P.** (2003) 7 SCC 141).

o) That the murder was committed due to deep seated mutual and personal rivalry (See: **State of M.P. V. Ghanshyam Singh** (2003) 8 SCC 13).

p) That the accused was a student (See: **Amit V. State of Maharashtra** (2003) 8 SCC 93.)

q) That the accused had no record of any previous heinous crime and there was no evidence that he will be a danger for the society. (See: **Amit V. State of Maharashtra** (2003) 8 SCC 93.)

r) When the prosecution evidence is silent about the

actual part that an accused has played in the murders and the manner in which he acted in the killings thus making it difficult to take a definite view that the part he played in the said killings was cruel and callous. (See : **S.C.Bahri V. State of Bihar.** AIR 1994 SC 2420).

23. The complexity of the issue as to whether the death sentence should be awarded in a given case however, arises not from the mitigating and aggravating circumstances, but to the weightage that is required to be given to each of such circumstances, totalling the weightage to be given to all such "mitigating" and "aggravating" circumstances and the final balancing of the same in order to determine if the case falls within the category of a rarest of rare case which calls for the extreme penalty of death.

. In **Simon V. State of Karnataka** reported in 2004(2) SCC 694 the Apex court observed as under :-

> " The grant of life imprisonment is the rule and death penalty an exception in the rarest of rare cases by stating "special reasons" for awarding it, but at the same time the punishment awarded must be commensurate with the crime committed by the accused. Ordinarily the sentence is not enhanced by the appellate court unless it is such a gross case that nothing but maximum sentence stipulated in law deserves to be awarded. The power to enhance death sentence from life should be very rarely exercised and only for strongest-possible reasons and not only because the appellate court is of that

> view. The question of enhancement of sentence to award death penalty can, however, be considered where the facts are such that to award any punishment less than the maximum would shock the conscience of the court.
>
> . The court has to consider the nature of the crime as well as the accused. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not these two aspects are so interwined that it is difficult to give a separate treatment to each of them. In many cases the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. The circumstance of duress or domination of another person is required to be taken into consideration as a relevant circumstance but that has to be considered on the facts of a particular case while considering and balancing all other aggravating and mitigating circumstances. That alone is not the determining factor."
>
> (extracted from paras-21, 22, 23, 29 & 32)

24. In the light of the aforesaid observations of the Apex court in various cases referred to here-in-above, we now revert to the facts of the present case for considering the question as to whether an extreme penalty of death is called for in this case. In this regard the submissions made on behalf of the defence, are reproduced in paragraph-3(c) here-in-above and the reply on behalf of the State is also enumerated in paragraph-4(c) here-in-above.

25. Amongst the mitigating circumstances, the first was the fact that the accused were women, they were quite young when the killings commenced, Seema being about 19 years of age and Renuka being about 25 years of age and that Renuka was the mother of four children, who are presently said to be lodged in a remand home. As regards these factors, though they would be in the nature of mitigating circumstances, yet, it would be worthwhile to take note that though similar factors existed in the case before the Apex court in **State V. Nalini** reported in 1999(5) SCC 253, the Apex court sentenced Nalini to death. In the present case, we further take note of the fact that the father of 3 of the children of Renuka,(PW 1) Kiran is alive and free. The evidence indicates that the child of Renuka from her earlier marriage, Ashish was virtually brought up by Kiran and Renuka after their marriage. Ashish is the eldest child, who was born in early December-1989. He must be on the verge of attaining 16 years of age. He alongwith his father would also be in a position to take care of the other children who are also fast growing. Besides, it appears that all the children, since about 1997, are lodged in the remand home at Kolhapur and their up-bringing is being looked after by the State.

26. It was contended that another mitigating circumstance is that the accused had a very

disturbed childhood. That the evidence of (PW 21) Pratibha Mohan Gavit indicated that the mother of the accused Anjanabai had been abandoned before 1986 by her husband Mohan Gavit. Mohan Gavit had then married (PW 21) Pratibha Gavit in 1986 and Mohan Gavit had a separate family consisting of Pratibha and her children Kranti and Devli and Deepali and this family was residing in Nasik district. The evidence further indicated that the mother of the accused Anjanabai had a criminal record going back to 1967. The first case against her being C.R.No.214/67 was registered at the Khadki police station. That thereafter there were 39 cases registered against her till February-1999 at various police stations in and around Pune city including the Vishrambag police station, Deccan police station, Swargate police station, Chatursinghi police station and Kothrud police station. They alongwith their mother were thus abandoned by their father and their mother Anjanabai taught them no better values while they were growing up as children. In our view, what is more important than a mere background of a disturbed childhood is whether there is a likelihood of reformation and any possibility that the accused could be safely reintroduced into society as a responsible citizen. If there is a serious apprehension that there is no hope in achieving this in the future and a good chance that the accused may continue their extreme

behaviour of murder and mayhem causing a further risk to society, than the mere historical background as to why the accused were turned into serial killers would lose its significance. The record indicates that accused no.1 Seema is by all accounts a hardened criminal. The police had produced at Exhibit-521 a list of 18 cases registered by various police stations in or around Pune city against her. This accused has graduated from being a petty thief to a hardhearted kidnapper and a merciless serial killer, involved in the killing of several small, innocent and helpless children. Her career in crime commenced prior to 1984 and was fortuitously discontinued only when she was arrested in 1996 on a complaint given by the mother of Kranti. On cases being thereafter detected, crimes have been registered against her till the year 1999. Accused no.2 Renuka has a criminal record which is no less impressive than her sister. The cases against her are enumerated in the list and this list (Exh.522) indicates that she also started her career in crime prior to 1984. The first case listed against her is C.R.No.124/84 registered by Vishrambag police station. Her career also continued till she was arrested in 1996 in the crime concerning the kidnapping of Kranti. Instances are known where persons coming from a deprived background, have beaten the odds against them to rise to responsible positions. The antecedents and activities of the

accused however, indicate that the present accused had not only willingly followed the footsteps of their mother Anjanabai but were on the way of overshadowing their mother in diabolical planning and merciless execution of a series of most the heinous kidnappings and murders, specifically targeting young and helpless children. The evidence indicates that from 1990 to 1996, the accused did not show the slightest remorse for the kidnapping and killing of such innocent children but with planning zeal and energy travelled to different towns in two States, for kidnapping such children and putting an end to their life in a most brutal manner. The evidence indicates that the accused not only indulged in such heinous serial kidnapping and killing but were completely indifferent and callous to the suffering of the young children and their distrant parents. The record indicates that while the child Santosh aged about 1 to 1 & 1/2 years was being killed by Anjanabai by dashing his head against an iron bar at the S.T.stand, Kolhapur, the two accused alongwith approver (PW 1) Kiran were standing nearby and eating Wada-pav while witnessing the killing. Similarly, the evidence indicates that after the brutal killing of the child Gauri who was a girl aged about 2 to 2 & 1/2 years, these accused alongwith (PW 1) Kiran decided to watch a movie and had gone to see a movie picture at Usha theatre in Kolhapur, carrying the dead body of the murdered

child in the bag. The nature of the injuries sufferred by some of the children are so severe that only an extreme depraved mind could have perpectuated or acquicised in such brutal killing. We have reproduced in this Judgment, the 42 injuries sufferred by the child Pankaj who was aged about 3 to 4 years. These injuries sufferred by Pankaj are not only in the nature of abrasions, contusions and lacerations but there were also incised wounds on his body. If a defenceless child like Pankaj was to be killed, a blow on a vital part of the unfortunate child would have sufficed. However, on noticing the number and nature of his injuries we were left to wonder as to what manner of person would caused such injuries to a small child or even acquise in their being causing. It may be worthwhile to mention that Pankaj according to the Doctor’s evidence died because of smothering. It appears that the child was smothered and then his body was repeatedly hit against the wall and the accused if not actually involved in the killing were present, witnessed and acquisiced in this killing. Almost every child who has been killed in this case was killed in a brutal manner. Even children who had a providential escape like Naresh and Meena were found to have injuries on their bodies. Some children or their dead bodies have even today not been found. Even after the killing the accused had shown not the slightest decency while disposing off the dead bodies. The

dead bodies of these children were stripped of their clothes and thrown into the ghat or left along the public roads and in one case in the womens public latrine. These incidents occurred over 6 years and during this period the accused turned into ruthless criminals. We find not a shread of material on record which could lead us to conclude that these accused could be reformed or be reintroduced into society as responsible citizens without causing any danger. We would like to place on record one more important circumstance which also leads us to believe that there was not an iota of repentance or remorse being felt by the accused. In the incidents relating to child Naresh, we have indicated that accused Renuka had committed an offence of forgery by filing a false application in the court at Nasik therein falsely claiming to be the mother of Naresh. While the present confirmation and appeal proceedings were in progress in the initial days of hearing, at their request both the accused were produced and kept present in court. During this period accused either singly or jointly preferred three applications, the contents of which are indicators of their continuing propensity to mis-lead the court by making false and mis-leading statements. The first such application was filed in this court by Renuka and the same is dated 22.6.2004. In this application she stated that this case did not pertain to 13 children but in all 54

children were involved. She claimed that the hearing of the matter should be suspended and she should be given into police custody. She sought the help of the court in order to enable her to get the people involved in the kidnapping of these 54 children arrested. She stated that the vehicles which had been used for kidnapping these 54 persons had not been produced by the police in the court. Instead the police had taken Rs.50/- lakhs from such persons and had let them off. She claimed that the accused had been falsely involved in this case. She claimed that the money which had been earned by the kidnappers through the sale of children had been kept with 2 Jewellers and all these persons were required to be arrested and brought before the court. She named these persons as Anna, Akkabai Kale, Bhai, Babu, Husein, Sultan and Anu. She claimed that (PW 1) Kiran Shinde and one Laxman Urit had both instigated Anna and Akkabai to kidnap children and had promised them Rs.20,000/- each. That the real culprits were Kiran Shinde, Laxman Urit, Akkabai and Anna, and these persons were selling the children. Similarly, Kiran was being paid Rs.1,00,000/- for every child. That her husband had kept these 54 children in August-1996 at a secured place. She claimed to have voluminous evidence including cassettes and photos which had been left with her by her husband. She claimed that all this evidence had been kept by her at a secured

place. She prayed for grant of police remand. On 6.7.2004, 2 separate applications were filed jointly by the accused. In one of these, the accused contended that Naresh was not a kidnapped child but the child of their real cousin sister. When their cousin sister by name Rekha had died, she had told the accused that she had left her child at Nasik. She had asked Renuka to bring the child from Nasik and to bring up the child. This, she had expressed as her last wish and had been agreed to by Renuka. Consequently, the accused had come to Nasik and made enquiries at the Trambak road remand home. There, they had met a Superintendent Nathu Jadhav and the accused had showed them a photograph of Naresh which was with them. Nathu Jadhav informed the accused that this boy was in the Adhar ashram. The accused then went to Adhar-ashram but were not allow to come inside the gate of the Ashram. After some time one lady arrived there and asked them to come with an Advocate. The accused then engaged an Advocate and returned to Adhar-ashram where they were told that Naresh had been given in adoption. That thereafter their Advocate filed a case in the court and while this case was going on, they had filed a photograph of Naresh alongwith his mother Rekha in the court proceedings. Similarly, they had also filed a photograph of Naresh with the accused and Anjanabai in the said proceedings. It was contended that the application filed by Advocate Kasliwal regarding

Naresh being her twin child was false and was not based upon any instructions given by Renuka. It was stated that Advocate Kasliwal must have written the said application out of his own imagination. The application raised a query that if Kiran knew that Naresh was a kidnapped child then why had he not disclosed this fact to the Judge hearing the Civil proceedings in Nasik or to any other police officer. It was contended that when Chatursinghi police station had arrested Anjanabai, Renuka had been directed to attend the police station every day. This application contained no specific prayer except to state that the contents may be considered. A 3rd joint application dated 6.7.2004 was made by the accused contending therein that the child Meena was infact the real daughter of Kiran Shinde. That the mother of Meena by name Sarika had been married by Kiran in a temple in the year 1988. Meena was born out of this marriage in the year 1990. Kiran had brought Sarika alongwith him from Belgaum. After some time, Sarika learnt that Kiran was involved in the business of kidnapping women. On learning this, she quarreled with Kiran and in 1991 Sarika informed about the activities of Kiran to Renuka’s husband. On learning about this, her husband tried to advise Kiran but Kiran started thereatening her. In 1993 Kiran murdered his wife Sarika. This fact was known to Meena. After killing Sarika, Kiran came to the house of Renuka alongwith Meena. Once the accused

had been to the dispensary of one Sanjay Bhide for a check up and only her mother Anjanabai and her 2 children were at home. Her elder son was studying in the Balwadi and her younger son was only 1 & 1/2 years old. That evening her mother had been to the market to buy vegetables and when she returned she was followed by a constable by name Bhagwat and the accused alongwith Anjanabai and Meena were taken to Shastri Nagar police chowky. On the day when they were arrested, Kiran Shinde had run away from the Shastrinagar police chowky. The accused and Anjanabai were taken to Kothrud police station. The application raised a query as to why Kiran had not informed the Kothrud police that Meena was a kidnapped child. Meena's mother could not be traced by the police only because she had been murdered. That the name of Meena was not Meena Ganesh Deshmukh but was Meena Kiran Shinde. The application stated that this court may call Meena and ask her as to who had killed her mother and as to who was her father. It was stated that Meena had no brother and it was at the request of Kiran that Meena was kept in the boarding. It was lastly stated that Kiran had falsely informed the police that the name of the child was Meena Ganesh Deshmukh. Once again this application contained no particular prayer save and except that the same may be considered.

27. On receipt of the application dated 22.6.2004

since the same contained a prayer, however, untenable, we had called and heard both the accused in chamber. The application suggested that (PW 1) Kiran was not the husband of accused Renuka. It also suggested that there was a larger dimension to the crime. Since the application mentioned that the identity of such children could be disclosed and that the evidence relating to the offence pertaining to this children was also in the custody of the accused, we asked the accused as to why such disclosure was not made in the trial court. Their answer was that they had made such disclosure but the Sessions Judge had refused to take the same on record. We have already mentioned that the accused have filed a written statement which does not contain any fact mentioned in the 3 applications referred to here-in-above. Since her application dated 22.6.2004 suggested that Kiran was not her husband, we asked Renuka as to who was the real husband and as to where he resides. To this, she replied that her real husband had been murdered by Kiran and therefore, there was no question of her husband being traced. When asked about the 54 children, she replied that these children were outside the State of Maharashtra and were in the custody of her relative. So also, she claimed that the cassettes mentioned in her application were also in her safe custody. She declined the offer of disclosing the whereabouts of any such children or

evidence, even if she was sent with a Magistrate. We have no hesitation in holding that these applications seems to be another attempt by the accused to mis-lead the court. The contents of these applications to our mind also indicate that there is no improvement and no redeeming factor in so far as the present accused are concerned. We feel that for the aforesaid reasons, the mere disturbed background of the accused cannot be given undue weightage as a mitigating circumstance. These applications give an insight into the present mental disposition of the accused. We find nothing on the record to even remotely suggest that the accused have experienced any repentence or remorse for the acts committed by them.

28. We then considered as to whether a lesser sentence ought to be imposed in view of the fact that the conviction was being made with the aid of section 34 of IPC. It is true that under certain circumstances, when the conviction is with the aid of sections of the IPC by which constructive liability can be fixed upon the accused such as sections 149, 34 or 109, the same may form a mitigating circumstance. For example, where the prosecution evidence was silent about the actual part that an accused had played in the murders and the conviction was therefore, required to be made with the aid of section 34 of IPC, the same could be

said to be mitigating factor because it would be difficult to take a definite view that the actual part that an accused played in the said killing was cruel or callous. In the present case, we have the evidence of (PW 1) Kiran which speaks about the mode and manner of the killing of the various children by these accused and Anjanabai. We are however, conscious of the fact that in so far as this part of the evidence of (PW 1) Kiran relating to the mode and manner of killing of the children is concerned, we have choosen a safer path of not placing reliance on the same and convicted the accused for the offence relating to the murder of the various children on the basis of voluminous circumstantial evidence brought on record by the prosecution, thus securing the conviction with the aid of section 34 of IPC. However, on a careful consideration, we find that even within this mitigating circumstance exist various shades and degrees. In the case of a single incident where the murder was cruel and callous but the exact role played by each of the accused was not known, the weightage that could be given to such a mitigating circumstance would be higher in degree. However, in a case where the accused continued to commit serial murders over a long period such as the 6 years in the present case, even if the exact role of each of the accused could not be established in each individual case, the mere increase in the number of brutal murders would

decrease the probability that the accused were not involved in the brutality and callousness and would reduce the value that could be attached to the aforesaid mitigating circumstance. This mitigating circumstance would further reduce in value if the numerous killings were effected over a long period of time as this would eliminate any feeling of remorse or repentence having been felt by the accused. As observed here-in-above, the killings in the present case had taken place over a period of 6 years and the accused have shown gross dis-regard for any human and civilized behaviour during this entire period.

29. We then considered as to whether the accused could be said to have acted under the duress or domination of any other person and we must record our finding that there is no evidence what-so-ever to indicate that these accused were either under the duress or domination of either their mother Anjanabai or (PW 1) Kiran. In fact, the evidence indicates that the present accused were in the forefront of the planning and execution of the kidnappings and killings. The evidence indicates that the proceeds of the thefts including the money and ornaments were kept by accused no.1 Renuka in her control. The approver (PW 1) Kiran used to come and collect money from Renuka. The evidence indicates that the accused Seema was the one

checking into the hotels in various towns where the family used to stay for the purpose of kidnapping and killing. From the various bank accounts which were frozen, it was evident that Renuka had also invested monies in fixed deposits in the name of her children. We have seen nothing to indicate that Seema was under the control or domination of her elder sister, mother or Kiran. She appears to have been a fullfledged participant in all the criminal activities indulged by the family of the accused.

30. Having weighed the aggravating and mitigating circumstances, we find that the former far out weigh the latter and this is one of the rarest of rare cases which would call for the imposition of the death penalty in relation to the proved murder of several children.

31. Before pronouncing the order, we would like to place on record that we are acquitting the accused of the charge under section 364 as we have held that the initial conspiracy was only to be for the purpose of kidnapping children for the use in petty thefts. We have convicted the accused for the various offences of murder with the aid of Section 34 of the IPC and not under Section 302 r/w. 120-B of IPC as has been done by the trial court in respect of the offences of murders and other offences. We have further made minor modification

in the convictions such as convicting the accused for attempt to kidnap the child Devli and not for kidnapping the child Devli. We have also modified the sentences awarded. These modifications made would be as found in the operative portion of our order given here-in-below.

32. We would also like to express our deepest appreciation for the good and consencious efforts made by the Additional Public Prosecutor Mrs.Pai in assisting the court in the confirmation proceedings and in the appeal. She had prepared and placed before us a voluminous compilation, detailing precisely the evidence relating to each of the several incidents which was very helpful in the course of arguments as well as while going through the records.

33. We therefore, proceed to pass the following order :-

O R D E R

(a) For the criminal conspiracy of kidnapping children and using them for thefts, both the accused are convicted under Section 120-B of IPC and sentenced to suffer rigorous imprisonment for a period of 3 years each and to pay a fine of Rs.2000/- each, in default to suffer further

imprisonment of 6 months each;

(b) For the kidnapping of the minor children Santosh, Bunty, Swati, Guddu, Meena, Raja, Shradha, Kranti, Gauri and Pankaj from lawful guardianship, each of the accused are convicted of an offence punishable under Section 363 r/w section 34 of IPC in respect of each of such offence relating to each of the aforesaid children and are sentenced to under-go rigorous imprisonment for 3 years each on each count and to pay a fine of Rs.2000/- each in default to suffer further R.I. for 6 months for each default with all the substantive sentences of imprisonment running concurrently ;

(c) For the kidnapping of the minor children Santosh, Bunty, Swati, Guddu, Meena, Raja, Shradha, Gauri and Pankaj with intent to cause the child to be secretely and wrongfully confined, each of the accused are convicted of an offence punishable under Section 365 r/w section 34 of IPC in respect of each of such offence relating to each of the aforesaid children and are sentenced to under-go rigorous imprisonment for 3 years each and to pay a fine of Rs.2000/-, in default to suffer further imprisonment of 6 months for each default, with all the substantive sentences of imprisonment running concurrently ;

(d) Accused Renuka Kiran Shinde is convicted of the offences punishable under Sections 468 of the Indian Penal Code for committing forgery for the purpose of cheating while attempting to obtain the custody of the child Naresh through court and is sentenced to suffer Rigorous imprisonment for a period of three years and to pay a fine of Rs.2000/-, in default to suffer further R.I. for 1 year ;

(e) For the attempt to commit kidnapping of the child Devli, each of the accused are convicted under Section 511 r/w section 363 and section 511 r/w section 365 of IPC and sentenced to suffer rigorous imprisonment for a period of 1 year each on each count and to pay a fine of Rs.1000/- each, in default to suffer rigorous imprisonment for 3 months for each default, with the substantive sentences on the aforesaid two counts running concurrently ;

(f) In respect of the murder of the children Santosh, Anjali, Shradha, Gauri and Pankaj in respect of each of such offence, both the accused are convicted under Section 302 r/w section 34 of IPC and for each offence, the sentence of death as awarded to each of them by the trial court is confirmed.

(g) That for causing the disappearence of the evidence of murder by disposing off the dead bodies

of Santosh, Anjali, Shradha, Gauri and Pankaj in respect of each such offence, both the accused are convicted under Section 201 read with 34 of the Indian Penal Code and for each such offence they are sentenced to undergo R.I. for 5 years each and to pay a fine of Rs.5000/- each, in default to suffer further R.I. for 2 years for each default with all substantive sentences running concurrently ;

(h) The accused are acquitted of all other charges ;

(i) Both the accused would be entitled to get set off for the period of their detention in jail in accordance with section 328 of the Code of Criminal Procedure 1973 ;

(j) To enable the accused to file a further appeal before a higher court, and/or to prefer any other legal remedy available to them, the sentence of death will not be executed for a period of 90 days from the date of this Judgment ;

(k) On execution of one of the death sentences as aforesaid, it would not be necessary to execute the other substantive sentences.

33. The Judgment and order of the trial court to stand modified and the confirmation case and the appeal to stand disposed off accordingly.

(R.M.S.Khandeparkar,J)

(R.S.Mohite,J)